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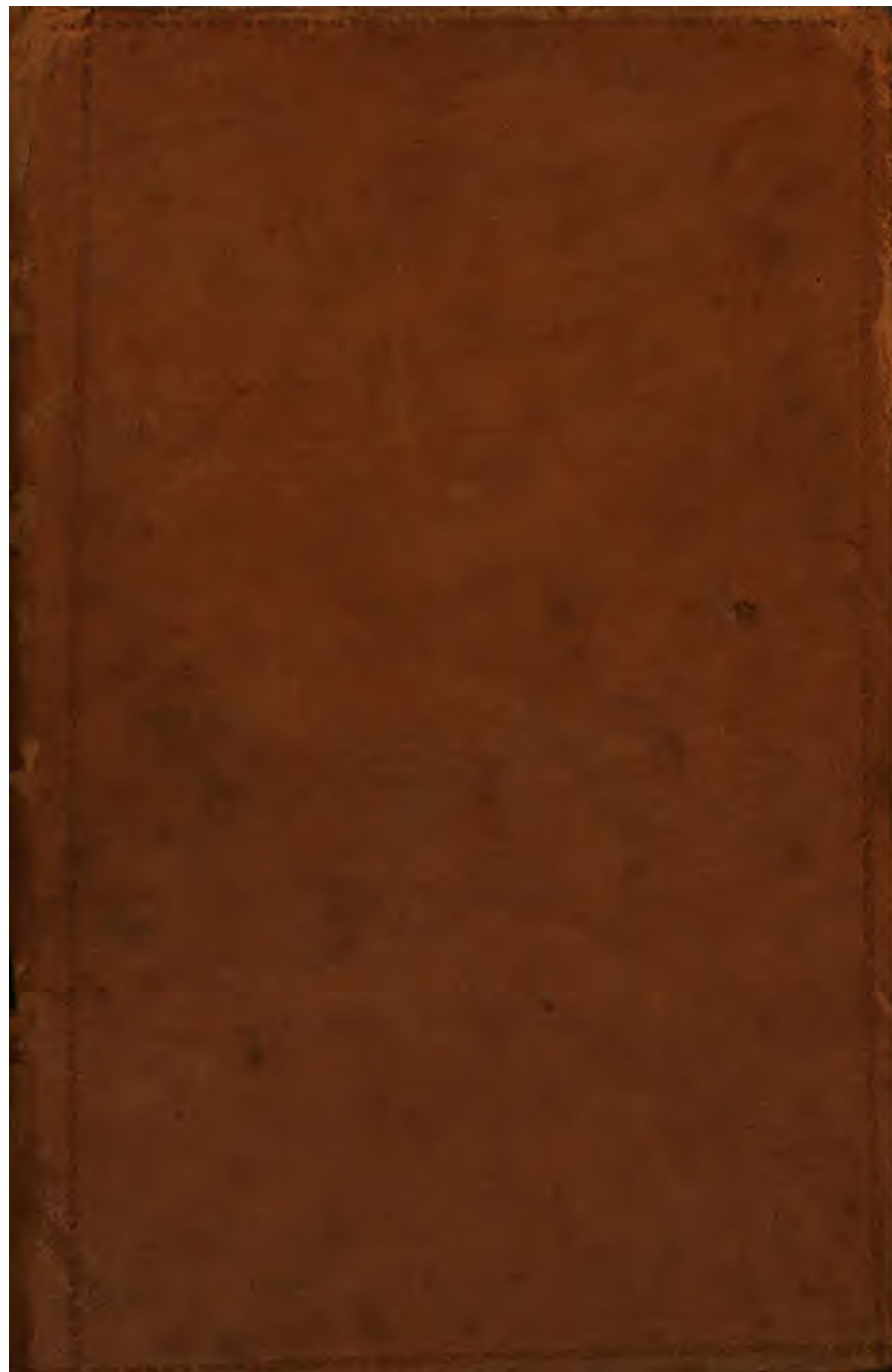
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REPORTS OF COMMITTEES

OF THE

HOUSE OF REPRESENTATIVES,

MADE

DURING THE FIRST SESSION

OF THE

THIRTY-FIFTH CONGRESS:

PRINTED BY ORDER OF THE HOUSE OF REPRESENTATIVES.

IN SIX VOLUMES.

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TO

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OF

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35TH CONGRESS, }
1st Session. }

HOUSE OF REPRESENTATIVES.

{ REPORT
{ No. 352.

R. R. RICHARDS.

[To accompany Res. No. 9.]

APRIL 28, 1858.

Mr. GOODE, from the Committee for the District of Columbia, made the following

REPORT.

The Committee for the District of Columbia, to whom was referred the petition of R. R. Richards, submit the following report :

In the spring of 1853 Rev. R. R. Richards was appointed a clerk in the Department of the Interior, at a salary of one thousand four hundred dollars. At an early day thereafter he was appointed chaplain to the United States penitentiary, at a salary of two hundred and fifty dollars per annum, though it was then provided by law that a person holding any office under this government, and receiving an annual salary for the same, should not receive additional compensation for other services rendered, or for the execution of the duties of any other office, whilst holding such original office, and receiving the salary therefor.

Mr. Richards continues to hold the clerkship to the present time, and held the office of chaplain, and performed the duties thereof, for three years and three months, alleging that he did not know of the provision of law which made it unlawful for him to receive the salary as chaplain. He applied to the 34th Congress to increase his salary as chaplain from two hundred and fifty dollars to six hundred dollars per annum. This subject was brought to the attention of the Committee for the District of Columbia of the House of Representatives, and *rejected* after full examination. At the close of the session to which was made the application for an increase of salary, there was inserted in one of the appropriation bills a clause appropriating *six hundred* dollars to pay the annual salary of the chaplain of the penitentiary, and the clause was construed to have a retrospective operation, and to authorize the chaplain to receive compensation at the rate of *six hundred* dollars per annum from the date of his original appointment; and he did receive such compensation accordingly, and continued to receive it, until he had filled the office about three years and three months, notwithstanding the provision of law that he should not receive any compensation for performing the duties of

chaplain whilst holding his clerkship in the Department of the Interior.

The sum thus realized by Mr. Richards, against the express provision of law, is about sixteen hundred and fifty dollars in cash actually received, to which he asks that three hundred dollars shall be added, claimed by him on account of his service for the last six months of his service as chaplain, and which the accounting officers of the treasury refused to allow.

During the three years and three months which Mr. Richards acted as chaplain, he received his annual salary as a clerk in the Department of the Interior, at the rate of fourteen hundred dollars per year, equal in the aggregate to \$4,550, to which add the \$1,650 received as pay for his services as chaplain, making the sum of \$6,200 already received, although he had no legal demand for more than \$4,550.

It has been stated already that the legal salary of the chaplain, when Mr. Richards received the appointment, was \$250 per annum. This provision of the general law remains the same; but clauses have been inserted in general appropriation bills appropriating six hundred dollars per annum to pay the salary, which affect the only modification of the law. If Congress shall decide that, in consequence of his alleged ignorance of the law, he has an *equitable claim* to the salary of chaplain as established by law when he accepted it, then he would have been entitled to receive for the whole term of his service the sum of eight hundred and twelve dollars and fifty cents; but for that term he has already received \$1,650, being \$837 50 more than such equitable claim, which sum he now justly owes to the government, even on such construction of law.

If Congress shall be of opinion that his account should be settled according to the law of the case, he is now indebted to government in the sum of \$1,650, exclusive of the \$300 which he now claims.

Under all the circumstances of the case, the committee have determined to instruct the chairman to report back the resolution to the House, with a recommendation that it *do not* pass.

PROVIDENT ASSOCIATION OF CLERKS IN THE CIVIL DE-
PARTMENTS.

[To accompany Bill S. 151.]

APRIL 28, 1858.

Mr. SCALES, from the Committee on the District of Columbia, made
the following

REPORT.

The Committee on the District of Columbia, to whom was referred the memorial of the Provident Association of Clerks, praying for a dissolution of said association, having had the same under consideration, beg leave to report:

That according to the terms of the charter of said association, as contained in the 21st article, Congress has no right to authorize its dissolution in such manner as asked for by the petitioners, and could not, as your committee submits, do so without a violation of the charter and an interference with vested rights. They therefore unanimously recommend the following resolution:

Resolved, That the prayer of the memorialists be not granted.

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GAS LIGHTS FOR CERTAIN STREETS ACROSS THE MALL.

[To accompany Bill H. R. No. 540.]

APRIL 28, 1858.

Mr. GOODE, from the Committee for the District of Columbia, made the following

REPORT.

The Committee for the District of Columbia, to whom was referred the petition of sundry citizens of Washington, praying for an appropriation to light with gas certain streets passing through the reservation of land in the city commonly known as the "Mall," have, according to order, had the same under consideration, and beg leave respectfully to report:

The "Mall" to which the petitioners refer is composed of the public grounds which lie on the south of the Washington canal, extending from Tiber creek, on the Potomac, comprehending the Washington Monument and Smithsonian Institute, and terminating near the public green-houses, on Third street. It is described on the map of the city as reservations 2 and 3, and is penetrated by the several streets which intersect Pennsylvania avenue between the Capitol and Treasury Department, the most important of which are Four-and-a-half, Seventh, and Twelfth; and it is represented to the committee that the petitioners would be content with an appropriation which would furnish lights on these three streets.

The public grounds separate from the body of the city a large population occupying lots south of the "Mall," who cannot reach Pennsylvania avenue otherwise than by traversing these grounds, and it appears reasonable that the streets should be lighted at the expense of the proctors, and that government, like other proprietors, should incur the expense of lighting the streets through the public grounds.

The committee accordingly recommend that the sum of six thousand four hundred dollars be appropriated for the object mentioned, and report a bill accordingly.

MAYOR, ALDERMEN AND COMMON COUNCIL OF GEORGETOWN.

[To accompany J. Res. No. 27.]

APRIL 28, 1858.

Mr. SCALES, from the Committee for the District of Columbia made the following

R E P O R T .

The Committee for the District of Columbia, to whom was referred the memorial of the mayor, aldermen and common council of Georgetown, in relation to the erection of lamp posts, &c., from the western termination of Pennsylvania avenue, through Bridge and High streets, have had the same under consideration, and find that at the last session of Congress the sum of four thousand dollars was appropriated for this purpose ; that the same has been expended, but found insufficient to complete the work. Your committee, therefore, in order to carry out the original design of Congress, which can be done by a small additional appropriation, beg leave to report the accompanying resolution.

horses, buildings, real estate, and materials appertaining to the operation of the road, the value thereof to be ascertained by a fair appraisal. And they propose, furthermore, that the authorities of the said city shall have the right, at any time during the said term of twenty-one years, to take possession of the tramway, upon the payment by the city for the property belonging to the company connected therewith and the appraised value of the unexpired franchise. And they propose and agree, further, that in case of a failure on their part to fulfil the stipulations of the contract entered into, all the privileges granted to them shall be forfeited.

It appears the proposition of the memorialists is warmly supported by the citizens of both Washington and Georgetown, manifested by numerous signed petitions.

In presenting, therefore, this subject for the consideration of Congress, it is proper briefly to review some of the most important questions that arise in connexion with the application of the memorialists.

1. Is the repaving of Pennsylvania avenue, at this time, necessary or expedient?

2. If so, does the cast-iron pavement fulfil better than any other the requirements of a good pavement, viz: durability, cleanliness, beauty, and facility of removal and replacement, for the laying down of water and gas pipes, or for sewerage; also for ease of draft, a firm foothold for horses, and ultimate economy of cost.

3. Is a railway, properly constructed and under good management, necessary or advisable for the transportation of passengers in this principal avenue? and what would be its probable effect upon the business and the value of the property situated therein?

4. Is the franchise which the memorialists ask of such a nature as to become a monopoly antagonistic to the interests of the government or city?

These important queries it is proposed fairly to examine. It cannot be denied that the present pavement of the carriage way in Pennsylvania avenue is of the most inferior description, so much so, that the question of repaving and improving it has been repeatedly and earnestly brought to the attention of Congress. It is not only in reference to the ordinary business of the city, but also that of the government, that the subject demands attention. Pennsylvania avenue is the great artery of the metropolis, through which all must travel who have any connexion with its affairs. The principal public offices are mostly on the line of this highway, with the Capitol at one end and the Executive mansion in a direct line, more than a mile distant, surrounded by the four principal departments, with the Smithsonian Institution on the one side, and the Post and Patent Offices about equi-distant on the other; while east of the Capitol it is the route of travel to the Navy Yard, and west of the War Department, to Georgetown, and that portion of the city where the heads of the departments, the diplomatic corps, the chiefs of the different bureaux, and other officials connected with the government, generally reside, enhancing its importance as a thoroughfare far beyond any other avenue or street in the city. In the original plan of the me-

tropolis, and in the location of the public buildings, this noble avenue was laid out as the grand trunk of the whole system—and with that view was made of extraordinary width; the wisdom of this provision is demonstrated from year to year, as its importance and its travel increases. Viewing it, therefore, as the grand approach to the Capitol, this avenue presents the strongest claims to improvement, both on the score of utility and propriety. There is no city of importance throughout the Union, where any facilities whatever exist for paving, whose principal thoroughfares are so notoriously inferior. In the city of New York, its principal street is laid with Russ pavement, Cortlandt and a portion of Nassau street with iron, many other streets with the Belgian pavement. In Boston, Tremont and other streets are paved with granite blocks; Howard and Court streets, and a portion of Washington street, with iron; Chestnut and other streets in Philadelphia are laid with Russ pavement. In the vicinity of Cincinnati and Louisville, no materials for the Russ or Belgian pavement being found, the cobble is used, but great care is taken in the selection of the stones, to have them small, uniform in size, and laid in a particular manner. New Orleans has transported granite from New York for its principal streets.

The immense expenditure involved in pavements give additional importance to the subject; expenditures arising not only from the original cost but by the constant demand for repairs, and so intimately is this question connected with the interests of every large city, that it is yearly attracting increased attention, and an allusion to it in this connexion will not be inappropriate. The cost of cobble varies from fifty cents to one dollar per square superficial yard; that of Belgian pavement from three to six dollars per square yard, and of Russ pavement from six to ten dollars per square yard. The costs of the various description of stone pavement depend much on the facilities of obtaining the material, the quantity and weight required being so great that transportation to any considerable distance becomes an important part thereof. The cost of iron is not so seriously affected by transportation; for while of stone three-fourths of a ton is required for a square yard of pavement, one-tenth to one-eighth of a ton of iron is sufficient.

The objections to cobble pavement are sufficiently obvious. The larger the stones of which it is composed the less are repairs needed, though it is more rough, and noisy, and destructive to vehicles; the smaller the stone used, the smoother and easier it is for a time, but the more difficult and expensive it becomes to preserve the surface. It is dusty in dry weather and muddy in wet. It is anything but ornamental in its appearance, and the only recommendation which it seems to have is the cheapness of its first cost. The Belgian is but a superior description of cobble pavement, better for a short time, because presenting a smoother surface, but soon partaking of all its faults. The general plane of its surface becomes broken and the stones wear round on the top, resembling, after a time, a large sized cobble. If it is laid in cement and on a bed of concrete, so that one stone cannot settle below another, then it wears to the smoothness of the Russ pavement, and becomes dangerous and destructive to horses. These

are the principal difficulties and objections to the different kinds of stone pavement, and they are the result of experience and a fair trial. The pavement of Broadway, in New York city, has become a positive nuisance, although beautiful in appearance and easily cleaned; there are times when, from extreme cold or from a slight accumulation of frost, it has been found necessary for the omnibuses to abandon it entirely, and use the parallel streets, which are paved with cobble, because horses could not stand upon it; and the government of the city, through the medium of a committee, has been endeavoring, for months past, to ascertain some cheap and speedy means of remedying the difficulty. Grooving it by hand has been tried, but has not been found to answer. The more it is grooved the faster it has been found to wear away.

The removal of pavements for the purposes of laying down water or gas pipes, and for repairs of sewers and pipes, is constantly necessary. Experience has shown that no stone pavement yet invented can be disturbed for this purpose without ruining it. This is more particularly the case with the Russ pavement, and no rougher or more objectionable pavement can be found in New York city than sections of Broadway, where the pavement has been disturbed, and the cost of taking up and relaying it has been found, in some cases, to exceed the original cost.

In the endeavor to avoid these various difficulties, an expedient was tried last year, in Wall street, New York, with square blocks of a size much larger than those used in the Russ pavement. To avoid cost and difficulty of taking up and relaying, these blocks were laid in gravel; to obtain a surface which should not be slippery, the stone used was of a very *coarse grain*.

The result, with but a year's use, is a pavement worn out and worthless. So far experience has shown that it will not do to depend upon the nature of the material for adhesion, as the finer and harder stone wears smooth, while the coarser stone will not withstand the travel. The *form* of surface must be depended on to secure the proper foothold for horses, and this form cannot be obtained with stone except by using small pebbles, or by the expensive grooving of granite blocks, seriously impairing their durability.

It is evident that, with the proper form of surface, iron fulfils this condition better than any other material, and it is quite as evident that iron can more readily be wrought into the proper form of surface than any other material.

The duty of the concrete foundation under a Russ pavement is simply to prevent any one stone from settling below those that surround it. If the blocks could be connected by dowelling, or other processes, this foundation would not be required, and the rigidity of this pavement would be avoided. No practicable way of accomplishing this in stone has yet been found. It is quite evident that iron offers every facility for accomplishing this object; the blocks may be cast in such a manner that each in its turn is supported by all with which it lies in contact. Neither the form of surface or the manner of connecting the blocks has any bearing upon the question of the cost, except as it may

affect the weight of the pavement. It costs no more to mould them with a proper surface, and with proper connexions, than to mould them smooth, and without those connexions. It is simply a question of weight of material. The blocks, when laid in place, mutually supporting each other, require simply a foundation of gravel, producing a dead elasticity, which avoids the destructive action upon the feet of horses produced by the rigidity of the Russ pavement. Hence the surface of the iron pavement may be chilled in the process of casting, rendering it so hard as to be almost indestructible. Iron pavement was laid down in Howard street, Boston, in the fall of 1852, and has been in constant use since that time, without the slightest repair, and with no perceptible effect of wear. It was laid in Court street, in that city, in 1853, and to this time is in the most perfect condition, and has required no repairs. It has since been laid in Washington street.

Iron pavement has been used in Nassau street, New York, since 1854. It is apparently in as perfect condition as when first laid down.

The applicability of iron for the purposes of a pavement has ceased to be an experiment. A committee of the common council of New York, to whom was referred the question of paving Cortlandt street and Maiden lane in that city, after a very full investigation of the subject, made in July, 1855, a report in which they make a comparison of the cost of various descriptions of pavement, for periods of 20, 30, 40, and 50 years, including first cost, maintenance, interest, &c.

They assume as a basis the first cost of the various pavements, as follows:

- Cobble 50 cents per square yard.
- Belgian \$3 00 per square yard.
- Granite block \$6 50 per square yard.
- Cast-iron \$6 00 per square yard.

From data obtained from the proper departments, they set forth the annual cost of repairs, as follows:

- Cobble 50 cents per square yard.
- Belgian 5 per cent. of its cost and to be serviceable for ten years.
- Russ 2 per cent. of its cost and to be serviceable for twenty years.
- Iron 2 per cent. to 8 and to be serviceable for fifty years.

From this data they report the following results as cost for a series of years, making an allowance for the value of the iron, after the pavement may be considered worn out.

1. Cobble.

1 square yard for 20 years.....	\$18 55
1 square yard for 30 years.....	32 82
1 square yard for 40 years.....	50 63
1 square yard for 50 years.....	72 00

2. Belgian.

1 square yard for 20 years.....	19 17
1 square yard for 30 years.....	34 36
1 square yard for 40 years.....	55 81
1 square yard for 50 years.....	80 21

3. *Russ.*

1 square yard for 20 years.....	\$20 09
1 square yard for 30 years.....	43 75
1 square yard for 40 years.....	84 86
1 square yard for 50 years.....	135 40

4. *Iron.*

1 square yard for 20 years.....	12 35
1 square yard for 30 years.....	18 90
1 square yard for 40 years.....	21 05
1 square yard for 50 years.....	25 25

They say "the comparative results, taking a street half a mile in length, and thirty feet wide, paved with each kind of pavement, and based upon periods of 20, 30, 40, and 50 years, are"

Years.	Iron.	Cobble.	Belgian.	Russ.
20	\$108,680	\$163,240	\$168,696	\$176,729
30	166,320	278,728	302,236	385,000
40	185,246	445,544	491,128	746,768
50	222,024	633,600	705,848	1,191,520

They further say: "By the above recapitulation, it will therefore be seen that the difference in favor of the adoption of the iron pavement, in its ultimate saving to the city for these periods, is as follows:"

On a street half a mile in length and thirty feet wide—

Years.	Over Cobble.	Over Belgian.	Over Russ.
20	\$54,360	\$60,016	\$68,112
30	112,408	135,916	218,680
40	260,304	305,888	561,528
50	411,576	483,824	969,496

The committee recommended that these streets should be paved with iron, and accordingly contracts were made. Cortlandt street has been paved, and Maiden lane will be, undoubtedly, the coming summer.

Abundant certificates are furnished in favor of the iron pavement, both in respect to beauty as well as all the other requisites of a pavement, among which are the following. The certificate below was given in the fall of 1854, and is presented as representing the opinion of parties who have had every opportunity of coming to a correct conclusion:

"The undersigned, citizens of Boston, doing business on Court street, opposite the iron pavement, take pleasure in stating that the

iron pavement is, in our judgment, superior to any other in use with which we are acquainted, particularly in its freedom from noise, dust, mud, and slipping. It adds much to the beauty of the street and enhances the value of property upon it, and from the test thus far made, we believe that it will last much longer than the granite block pavements.

"This pavement remains as firm as when first laid down, and still presents the same even, beautiful surface."

This certificate is signed by every firm doing business on both sides of Court street, opposite the iron pavement, except one, and is endorsed as follows :

"I fully concur in the opinion expressed by the above persons, residing and doing business in Court street, opposite the iron pavement.

"ABBOTT LAWRENCE."

The following certificates, in regard to the iron pavement in Nassau street, New York, are also presented as embodying the views of all who have examined its operation :

"I have examined the pavement, as now laid down in Nassau street, and take great pleasure in saying that I believe it superior to any pavement I have ever seen. I am fully of the opinion that if such a pavement was now in Broadway it would return its whole cost to the community in less than three years, by the saving of time ; by enabling horses to draw heavier loads, to stop and start more quickly, to travel faster with safety, and in the saving of sprinkling so often, and the greater freedom from dust and mud, and consequent injury to the business, comfort, and safety of all who pass in that great thoroughfare of our city.

"PETER COOPER."

The following is the testimonial of draymen of respectability, whose stand is on the iron pavement in Nassau street :

"The undersigned, draymen in the city of New York, cheerfully state, that having used the iron pavement in Nassau street almost hourly since it was laid down, we regard it as superior to all other kinds of pavement used in this city in its freedom from noise, dust, mud, and slipping. We had rather start a full load on it than an empty dray on the granite blocks ; and would sooner draw a load of *one ton* on it than *half a ton* on the granite blocks. We would add that our stand being on the iron pavement we have had good opportunity of judging of the effect of travel upon it.

"JAMES M. STREETER,

"HENRY S. WEYANT,

"D. B. ANDREWS,

"NATHANIEL FELLOWS."

None of the pavements above referred to were chilled upon the surface ; and it is fair to assume, from all experience in the use of cast-iron, that the chilled surface will last twice as long as that of the ordinary surface cast in sand.

Cleanliness is an important condition in a pavement. The accumulation of dirt upon all of the stone pavements, except the Russ, is a noticeable feature; and is caused by the earth from below being forced up through the interstices between the stones. It is avoided in the Russ pavement by the solid concrete foundation upon which the blocks rest, and this is the only pavement in which this accumulation is avoided. Hence the necessity in a pavement resting on gravel or earth foundation that the joints should be close and well fitted. This cannot be done with stone without an exorbitant outlay, and iron is again suggested as offering every facility. It may be cast of such form, without increase of expense, as will make a perfectly close surface, confining the material below beyond possibility of escape. Not only is the carriage way kept clean, but the liability to settle is avoided, and a perfect surface is preserved. The form of pavement which it is proposed to lay down in Pennsylvania avenue is shown in the accompanying plan. Each block consists of a cylinder of about twelve inches in diameter and about four inches in depth, standing upon its end, the top being covered by a sexagonal plate projecting about three-fourths of an inch all around outside of the cylinder. This plate is about thirteen and a half inches across between its parallel sides, and its surface is corrugated by convex projections or bosses about three inches in diameter and three-fourths of an inch in height, arranged according to a regular system, by which the lines of the projections run obliquely across the street. The interior of the cylinder is strengthened by six ribs, or partitions, radiating from the centre to the circumference; each of the cells thus formed being covered by one of the bosses. The whole forms one single casting. The surface of the blocks being sexagonal, when laid in place the whole surface of the street is covered, and no interstices or spaces for the escape of the earth below are left. The lower edges of the cylinder and partitions are sharp, and the block is driven down into the foundation until the whole interior is filled, and the top has a firm bearing upon the material below. At the angles a space is left for the insertion of a key of cast-iron of such form that when driven down and turned to its place the blocks are confined together and mutually supported; each block depending upon the six which surround it. No block can settle below the others, nor can any series of blocks settle without a corresponding elevation in some other portion of the pavement, because the material below cannot escape, and, by means of ribs on the exterior of the cylinders, the blocks are in contact for their whole depth, forming an arch of cast-iron. It is for this reason well calculated for localities where gravel cannot be procured, and where it is necessary to pave in an alluvial soil, such as is found in southern and western cities. The corrugated surface is chilled in process of casting, rendering it so hard as not to be affected by the action of a file. The gutters are of cast iron, run in convenient lengths, and of the required dimensions; connected with the pavement by a process of keying in the same manner that the blocks are connected together, the whole forming one single connected structure from one side to the other, with no weak or defective points in which ruts can be worn. When repairs are needed, or it is necessary to remove any one section for the purposes of *water*,

gas, or sewerage, it is readily unlocked by the removal of ten keys, serving to displace *two blocks*, after which they are removed laterally. They may be replaced in the same manner, and when again keyed the pavement is as perfect a structure as when first laid.

This plan of pavement seems to fulfill every condition required in a perfect carriage way. It is ornamental, (as without any additional cost the surface can be wrought into any required patterns,) and suitable for any particular locality. The foothold is perfect, depending upon the form of surface without regard to material. The bosses are so shaped and so arranged, and are at such distances apart, that the draft is smooth and easy. The blocks are so connected and supported that a perfect surface is preserved without reference to the quality of the foundation. There are no interstices through which dirt can accumulate by being forced through the pavement. It is so constructed as to form a perfect arch from one side of the street to the other, and the joints between the blocks are never longitudinal with the street, but either crosswise or oblique. It is easily taken up and relaid without injury. It can be swept and cleaned with facility. Experience demonstrates beyond a question that iron must be adopted for the pavement of the principal thoroughfares of our large cities, and that no other material will fully answer the purpose. Where granite can readily be obtained the cost of iron is no greater than that of the Russ pavement. When it becomes necessary to transport the stone for considerable distances the iron can be laid much cheaper, and when worn out the material left is worth one-third the original cost.

The weight of iron required is from 200 to 300 pounds per square superficial yard, dependent upon the traffic to which it is to be subjected and upon the width of the street. For a street the width of Pennsylvania avenue and to suit its traffic, two hundred and fifty pounds weight would probably be sufficient. The cost of this would be about seven dollars and fifty cents (\$7 50) per square yard. The minimum weight would be (\$6 50) six dollars and fifty cents.

In regard to the question of railways as a means of transport for passengers through the streets of cities, it must be admitted, there is a great diversity of opinion; but it is believed that objections are made only by those who are not familiar with their working, or against some particular detail of their construction. The railway, as a principle, has every argument in its favor; and if any valid objections can be made against them, as they are constructed, it is against such features as can be readily modified. The Harlem railway, in New York, was the first used for the local business of the city, in the carrying of passengers in small horse cars. It was not originally constructed for this purpose, and was laid with a rail of the ordinary pattern in use upon ordinary railways, and with a gauge of four feet eight and a half inches. The form of rail did not admit of a smooth surface or perfect connexion with the pavement, offering serious obstruction to the passage of ordinary vehicles. When subsequently it was proposed to lay railways through the Sixth and Eighth avenues, this objection was most seriously urged. To avoid the difficulty, a rail of a groove pattern was adopted. This admitted a pavement laid close against both sides of the rail and even with its top, and

removed, to a considerable extent, one very important objection. The groove is made shallow, wide and flaring, so that the wheels of an ordinary vehicle will readily enter or leave it. To make the surface more perfect, square blocks were laid on each side of the rails, while the remainder was laid with the ordinary cobble stone. Successive improvements in the method of paving, and in the form of rail have been made until railways have, in that city, become an indispensable convenience. They have been adopted in Boston, Brooklyn and Philadelphia, and the construction of new lines is in progress. It is not, however, to be said that they have been perfected, or that all the objections to them have ceased, although in the city of New York, as the longitudinal avenues are extended, the rule which once prevailed has been reversed, and the extension of the railways is demanded by the people, instead of being asked for by the railway companies. There are those who are ready to concede their utility to the fullest extent, and yet who object to them on the ground that they still offer obstruction to other travel, in consequence of the faults of their construction, and the width of track, as well as the cumbersomeness of the carriages. The grooved rails are laid upon longitudinal wooden sills, which in their turn lay upon wooden cross-ties. This wooden structure is filled up with gravel in which the pavement is laid. The pavement and railway are therefore two independent structures, neither dependent upon the other. In some cases the rails settle below the paving, and in others the paving below the rails. The greater the difference of level between the two, the greater is the obstruction to ordinary travel. If both could be kept upon the same level this objection would cease.

Another difficulty is, that the perishable nature of the sills renders a renewal necessary every few years, and a constant repair is going on.

The adoption of the proposed railway in Pennsylvania avenue, and the connexion with the iron pavement, will make available all the advantages to be derived from their use without the difficulties last referred to.

By the same process of keying, as adopted between the blocks and between the blocks and gutters, the rails are held in place in the pavement. The rails are kept upon the same level as the pavement and are a part of the same structure. They merely form four parallel grooves in a cast iron paving, serving to guide the carriages and keep them in given lines in the street. No perishable wooden material is required, and the obstruction and defacement of the street consequent upon constant repairs is avoided.

The width of gauge adopted upon existing street railways seems to be entirely an accidental feature, the other roads in New York adopting the same gauge as the Harlem road, which was constructed originally without reference to being used as a street railway. In other cities the same gauge has been adopted without any better reason.

There is certainly no good reason why a railway for street purposes, to be used with horse power and with small light cars, and at a speed not exceeding five or six miles to the hour, should require a width of gauge such as is sufficient for bearing locomotives and trains at a speed of thirty or forty miles per hour.

The ordinary street cars in use are 7 to 7½ feet in width, and might with advantage be reduced to six. Our large passenger cars drawn by locomotives are 9 to 9½ feet. The same proportion between the width of car and width of track would give from 3 to 3½ feet as sufficient for a street railway, without making allowance for the difference of speed.

The objection to the wide gauge and the wide car does not apply with the same force in Pennsylvania avenue as in some of the narrower streets in New York, Boston, Brooklyn, and Philadelphia, through which railways are laid. But there are other considerations in favor of the narrow track and narrow car, which apply equally everywhere. The width proposed for this avenue is three feet six inches to four feet for the track, and five and a half to six feet for the cars. Their height from the pavement will be about twenty-two inches. They are, in fact, similar to an omnibus body, elongated and resting upon car-wheels, but much lower. Their capacity is for twenty passengers, and they are designed to be drawn by one horse only. These carriages are ornamental in form and design, and will not occupy more than thirteen feet of the width of the street, from out to out of carriages on a double track. No conductor is required, the driver performing the same duties as the omnibus driver. Passengers need not be annoyed by persons standing in their front, or by the constant passing of a conductor through a crowded passage way. In the use of one horse only, which is permitted by the lightness of the carriages, the travel is in the centre, between the two tracks, where a perfect foothold is obtained.

A more prompt, speedy, and comfortable transit of passengers is insured, because of the small number that it is proposed to carry in each carriage. Their stops will be fewer than the large car; they can stop and start more readily. To do a given amount of traffic the carriages must be run at more frequent intervals; thus accommodating the public better. The transit will be more regular and rapid, and their convenience in every way enhanced to the public over any heretofore used. The whole amount in the street will not be dissimilar to that of only two lines of omnibuses, but far more safe and convenient because less elevated from the pavement, occupying less width, having no axles, wheels, and hubs projecting beyond the body of the carriage, and confined to straight lines in the centre of the street instead of being scattered over its entire width.

While admitting the plausibility of some of the arguments against railways in thronged thoroughfares, on account of a few defects in their construction and of the space the ordinary carriages occupy, and the consequent interruption to other vehicles, there can be no question but that the railway affords the most comfortable and the most convenient and economical means of transport for passengers from one point of a city to another. Remedy the few defects in the tracks referred to, and divest the railway carriage of its cumbersome, and these objections cease. The same number of passengers may be carried by railway with half the number of carriages and one-quarter the number of horses that would be required with omnibuses. The pavements are relieved from immense wear and tear.

The noise and dust is avoided. The ingress and egress is easier and more convenient. They are safer to pedestrians, because the route of the car is fixed and well known; and, finally, the rates of fare less than in omnibuses.

It cannot be believed that conveniences of public transport of such a nature, and so divested of all the remaining objectionable features which it is alleged pertain to them in cities where they are used, can be otherwise than beneficial to the interests of the city, and to the value of property along their route.

It is a significant fact that in the city of New York, where railways are used with all the faults in their construction which their opponents set forth against them, property in the longitudinal avenues through which they run has, since their construction, increased in value 50 per cent., while in similar and parallel avenues which have no railways it has not increased 10 per cent. In Brooklyn the railway system has developed and brought into use property to the extent of ten times the whole cost of the roads, which for years yet, without such facilities, would have been unimproved and valueless. Extracts from the testimony of men of respectability, who have had peculiar opportunities of witnessing the operation of these railways and their effects upon the value of property, are appended. This testimony was taken by commissioners to be used in a case between the city of Louisville and the Louisville and Portland Railway, but it is none the less pertinent.

First is that of Edwin Smith, who has been for the last twenty-five years a city surveyor and civil engineer in the city of New York. He says:

"These railways are preferable to any existing method for the transportation of passengers through the streets of cities, for various reasons, viz: a great saving is made in the wear and tear of pavements, and in the wear and tear of vehicles. The cars are safer to pedestrians and ordinary vehicles, as they can be stopped quicker than omnibuses. They are less noisy than vehicles upon the pavements. They create less dust. A given number of passengers require less than half the number of vehicles that would be required in transportation by omnibuses, and a correspondingly less number of horses. They are easier of ingress and egress than omnibuses; they are more comfortable, in every respect, to passengers. Passengers can be transported at less rates. Being confined to a straight line they offer less obstruction to other travel than omnibuses, and serve to systematize and regulate it. Few of the streets in New York city through which railways pass are as wide as the width assumed in this interrogatory for Main street, in Louisville. The avenues in the upper part of the city are about this width, viz: sixty feet between the curb stones, but, with the exception of Canal street and a part of the Bowery, the streets in the lower part of the city are much narrower; Oliver street, through which a railway passes, is but twenty-one feet between curbs.

"New York, Brooklyn, Boston, Philadelphia, and, I think, New Orleans, have railroads in their streets.

"I know nothing about the business of Main street, in Louisville, and, therefore, cannot make a comparison. The travel in many of the streets in New York through which railways pass is very great.

Some of them are main thoroughfares. Fulton street, in Brooklyn, is the principal street. The system of railways in that city all converges into this street, and all the cars from the various lines run through it to the ferry at its foot. The track in South street, New York, runs directly along the wharves of East river, where an *immense* shipping business is transacted, and where heavy draying is required. The cars upon the roads mentioned are propelled by horse power, and the roads are esteemed of great public utility. I cannot say how they affect the business of the streets through which they pass in Boston, New Orleans, and Philadelphia. In Brooklyn, Fulton street remains the principal street, as it was before railways were laid in it. I do not know that its business is injured by the railway, on the contrary, the railway gives importance to the street and value to the property, and tends to retain for it the character of the principal street of the city. In New York the property has been greatly enhanced in value upon the streets where railways have been constructed. The effect upon the property may be judged by the effect in the avenues in the upper part of the city. The avenues in which railways have not been constructed, viz: A, B, C, and D, and Seventh avenue, are streets in which but little business is done, while Second, Third, Fourth, Sixth, Eighth, &c., have a large amount of business, and are business thoroughfares.

"With the exception of Fifth avenue, which has importance as a street conventionally retained for splendid residences, the property upon the avenues having no railways, is less valuable than that in which railways are laid.

"In the lower part of the city the most extensive and costly stores for wholesale and jobbing purposes are being constructed upon streets in which railways are laid, or in their immediate vicinity. That portion of the city upon and in the immediate vicinity of the lower terminus of the Sixth and Eighth avenue railroads, is now undergoing greater improvements in rebuilding, for heavy commercial purposes, than any other. As compared with omnibuses, the elements of convenience, not only to the passenger, but to the other travel of the streets, is decidedly in favor of the cars, even with their present width of 7 to 7½ feet. They occupy less space than omnibuses, as the latter have their wheels projecting from and outside of the body of the carriage, occupying 8½ to 9 feet, while the former have their wheels inside of the body. Cars for street purposes, if deemed expedient, might be made narrower than those at present used; and if the bodies were made of the same width as omnibus bodies, viz: 5 feet 3 inches, they would occupy but 12 feet from outside to outside, on a double line, allowing for a space of one and one and a half feet between them. With the same space between any two omnibuses, they would occupy about 17½ feet.

"Property is rated higher, and is more valuable as a general thing, upon streets upon which railways are laid, than upon similar and parallel streets through which railways have not been laid. For instance, in Sixth and Eighth avenues, since the railroads have been laid, the property along the lines and on the crossing streets has more than doubled in value.

Second, is that of Daniel Dodge, formerly alderman of the city of New York. He says:

"I concur fully in all the answers to these interrogatories given by Edwin Smith, civil engineer and surveyor.

"I desire to add to the answer to the 9th interrogatory as follows, viz: Chatham street, which is about 33 feet wide between the curb stones, is the great thoroughfare for the eastern half of the city; the travel from all the main streets on that section, viz: Bowery, East Broadway, Division street, and others, converging into it at Chatham square in its course to Broadway. The cars of the 1st, 2d, and 3d avenue roads, pass through Chatham street. The tracks were laid in 1851, and the project met with the most strenuous opposition, on the ground that the street was so narrow as to render it impossible for the cars to pass, without interfering with and obstructing all other travel, thus ruining the business of the street, and depreciating the value of real estate. The result has proved the entire reverse of these anticipations, and the railways have been of great advantage to the street, increasing its business and enhancing the value of its property. It still remains the great tunnel for all the travel of the eastern side of the city, and it is freely admitted that the cars do not inconvenience the other travel so much as omnibuses. The result of the experiment in this, conclusively demonstrates that railways may be laid and cars run in streets of thirty-three (33) feet width, without embarrassing the miscellaneous travel, or injuring the property or business of such streets, but, on the contrary, proving positively beneficial to both. One principal reason is, the regulation given to the other travel, by the cars being confined to certain lines in the middle of the street. The miscellaneous travel naturally divides on either side as the cars pass, and no clashing or collision occurs, because the course of the cars is fixed and well known. The travel is facilitated by this natural regulation, and the liability to obstruction of the streets, by a 'jam' of vehicles, greatly lessened. It is upon this demonstration, fully examined, inquired into, and admitted, that the authorities of Brooklyn relied, in adopting the system of railways now in operation in that city. I was a member of the board of aldermen of the city of New York in the years 1850 and 1851, when the discussion upon these various railroad projects came up, and thus have had my attention drawn particularly to the subject of the requirements of a large city in the means of the transportation of passengers through its streets. I was also a member of several committees of the common council having this subject under consideration, and heard nearly all the arguments and testimony presented for and against these roads previous to their adoption. They were opposed before the committee, in the most strenuous manner, by some of the most influential citizens of the city, and by influential property owners in the street through which they were destined to pass. Since the construction of the roads the most bitter of these opponents have admitted their utility, and that their property has been enhanced in value by the roads, instead of being depreciated; and my whole investigation of the subject at that time, as well as my observation and

knowledge of the result, has satisfied me that the street railway and car present advantages far beyond any existing method for the transportation of passengers through the streets, and that their tendency is rather to equalize the value of property, not by depreciating that at the centre of business, but by enhancing that more remote."

Third, is that of Edmund Griffin, formerly alderman of the city of New York. He says:

"I concur fully in all the answers to all these interrogatories made by Edwin Smith, civil engineer and surveyor. I desire to answer to the 9th interrogatory.

"I was a member of the board of aldermen of the city of New York in the years 1850 and 1851. It was at this time that the project of the various city railroads, since constructed, was broached, and the discussions, pro and con, before the city government, drew my attention to that subject. I have been familiar with these projects through their construction and operation, and am satisfied that in no other way could the requirements of a large city, in the means of the transportation of passengers, be fulfilled with so little inconvenience to other travel, or with so little hazard of injury to private interests. The operation of the railway on Chatham street has been considered a test, in regard to the question of inconvenience to other travel and damage to business and property, as that street is a great thoroughfare for the eastern portion of the city, and is but 33 feet wide between curbs. The operation of that road has been a conclusive demonstration that street railways are not only of great public utility, but that they do not inconvenience and obstruct the other travel and business of the street to any extent, comparable with omnibuses, and that their influence upon the value of property along their line is beneficial. The operation of the New York street railways was thoroughly examined by the authorities of Brooklyn city, before the adoption of the system which has been constructed in the latter city. When the system was first proposed the entire city government, with but two or three exceptions, were totally opposed to its construction; but, after a year's examination of the New York city roads, the government of Brooklyn adopted an entire system radiating in various directions through the city.

"Their effect on that city has been to largely enhance the value of property, and they have become an indispensable convenience."

Fourth, is that of James S. Libby, proprietor of Lovejoy's Hotel, in the city of New York. He says:

"I concur fully in the answers to all these interrogatories made by Edwin Smith, civil engineer and surveyor, and adopt them as my own. I desire to add in answer to 9th interrogatory, as follows: I was one of the original projectors and constructors of the Sixth avenue railroad, and president of the company. The project met with great opposition, as it was the first street railway designed *exclusively* for city uses. The Harlem Railroad Company had used small cars between the park and 27th street, but their road was constructed with the ordinary T rail, and was inconvenient to ordinary vehicles in crossing. The project was opposed on the ground of this inconvenience. It was argued that it would interfere with

and incommode the ordinary travel, and thus prove detrimental to the business of the streets through which it passed, and consequently depreciate the value of the property. The adoption of grooved rail removed the one serious difficulty. The railway has proved a great public convenience—has enhanced the value of property along its entire line, and the arguments of the opposition have been shown to be entirely groundless.

“The operation of the railroad in Chatham street has been the most perfect refutation of all the arguments of the opposers of street railways, as that street is the thoroughfare for a large portion of the city, and is but thirty-three (33) feet wide. I consider it to be perfectly demonstrated by the operation of the street railways of New York, as well as Brooklyn, that, properly constructed, they are a great public convenience, and that they enhance the property in their vicinity and along their line, and that the cars inconvenience ordinary travel less than omnibuses.

“I own valuable real estate facing directly on the line of the Third and Fourth avenue roads near their termini, opposite the Astor House, and consider its value greatly enhanced by the roads, notwithstanding the street, ‘Park Row’ (being the connexion between Chatham street and Broadway,) is the thoroughfare for all the travel of the eastern portion of the city.

“The property upon the Sixth avenue has advanced fifty per cent. in value since the railway was constructed, whilst that upon Seventh avenue, directly alongside and parallel with it, has not advanced *ten* per cent.”

Such is the effect of railways in cities, and such is the universal effect of all facilities of intercourse and transport, whether between separate cities or separate and distinct points within the same city.

The memorialists disclaim asking for any grants which can be considered in any way as a monopoly. Usually, the grants in New York city for street railways have been for periods of fifty years, and have been without any compensation to the city. The railroad companies only undertake to keep their tracks in repair, and to clean them. The memorialists here ask the privilege of running, for a period of twenty-one years, convenient, ornamental, and comfortable carriages, for the conveyance of passengers through Pennsylvania avenue, confining themselves to straight lines in the centre of the street—subjecting themselves to the ordinances of the city government in relation to the rate of fare and speed, in the same manner that all public vehicles are regulated and governed.

They do not ask that other public vehicles should be driven off. They do not ask to run in every direction, wearing out the pavements, which are laid and maintained at the expense of the government, but they propose to lay down, at their own expense, the grooves upon which their carriages are to run, and for less privileges than are given to any line of omnibuses without compensation, but at a positive cost to the government in the maintenance of the streets, they propose to keep the whole pavement in the avenue in repair for the duration of the privilege; and at any time, during that period, they propose that the city may take possession of their railway upon paying them the

value of the unexpired term, and purchasing the real and personal property pertaining thereto.

There would seem to be nothing in the proposition of the memorialists which by any construction could be considered as aiming at or asking for a monopoly. If the grant gave them the privilege of carrying passengers through Pennsylvania avenue to the exclusion of other public vehicles, and for a fixed period of time beyond the control of the government or city, then it might be considered a monopoly; but this is not the case. They may be dispossessed at any time, upon the payment to them by the city of the value of the property they have created, part of which would be immovable, and all of which would be worthless to them for any other purposes. At the expiration of the twenty-one years they propose to convey to the city, free of charge, the railway in good order, the authorities merely paying them for the real and personal property which they may have acquired pertinent to the operation of the railway.

The plan proposed seems to meet in all respects the requirements of a great and progressive city in carriage pavements and vehicles of public transport, and its adoption would, we believe, perfect the original intention of the founders of the city, and make Pennsylvania avenue one of the finest streets in the world, and worthy of the capital of the nation.

While the result of the examination which the committee has given to the subject induces them to entertain a favorable opinion of the iron pavement, thus expressed, they are not prepared to recommend at this time the repaving of Pennsylvania avenue, and report adversely thereto; still, as it may become necessary to pave anew said avenue or other streets, and especially in the vicinity of the Capitol, the committee have given a careful attention to the whole subject, and would respectfully recommend that a single square of eight hundred square yards be laid with the new pavement and tramway for the purpose of more thoroughly testing its utility, durability, and general advantages, and that an appropriation be made therefor.

The committee, fully impressed with the importance and advantage of a railway through Pennsylvania avenue, for the reasons before stated, report the accompanying bill.

H. Rep. Com. 356—2

ANDREW GLASSELL.

APRIL 28, 1858.

Mr. READY, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred Senate Bill 225, for the relief of Andrew Glassell, of San Francisco, respectfully report:

That the bill under consideration involves the construction of an act of Congress approved the 10th of January, 1855, which is as follows:

"*Be it enacted, &c.*, That the provisions of the act of Congress approved third March, 1851, 'to ascertain and settle the private land claims in the State of California,' and the second section of the act of eighteenth January, 1854, continuing the same in force, be further continued in force for the term of one year and no longer, from the third March eighteen hundred and fifty-five.

"*Sec. 2.* That the United States district attorney for the northern district of California be, and he is hereby, authorized to employ assistant counsel to aid him in defending the interests of the United States in the land suits for the adjudication of such claims before the district court, at a salary not exceeding three thousand six hundred dollars per annum; and also to employ such clerical force, not exceeding two persons, at a compensation of one hundred and fifty dollars per month each; the services of said assistant counsel and the clerical force aforesaid not to continue beyond the exigencies of the service, nor longer than the term of one year from the period of their several appointments."

It appears that Andrew Glassell was employed as assistant counsel, for one year, under the provisions of the aforesaid act of Congress, by Samuel W. Inge, then district attorney for the United States for the northern district of California, at a salary of \$3,600, prescribed in said act.

Mr. Glassell alleges that the year for which he was employed expired on the 10th of January, 1856, and "the exigency for his services still continuing, the said Samuel W. Inge, district attorney, &c., again employed him, he agreeing to rely upon the government of the

United States for compensation ; and that he continued faithfully to render all necessary services under said employment from the 10th day of January, 1856, until the 1st day of May, 1856, when his employment ceased by the resignation of said district attorney."

For the alleged services between the 10th of January and 1st of May, 1856, he claims \$1,400 as the *pro rata* of \$3,600 per annum, which was paid him for the preceding year, as per act of Congress.

If he were entitled to be paid at the rate of \$300 per month (which is the rate he claims) for services rendered after the expiration of the year, he would be entitled to *six hundred dollars only*, instead of fourteen hundred dollars. He computes his first employment from the 10th of January, 1855, the day on which the act of Congress referred to was approved ; and from the 10th of January, 1856, he claims the extra or additional compensation under his new engagement.

It was impossible for his first employment to have commenced on the 10th of January, 1855. It could not have been known at San Francisco, California, where he and the district attorney who was to employ him both resided, that the act had passed Congress and been approved for several weeks thereafter ; and from the language of the act it is obvious the year for which he was to be employed terminated on the 3d of March, 1856, and not on the 10th of January preceding. This termination of the year would allow about the necessary time from the passage of the act of 10th of January, 1855, for it to reach San Francisco. There could not, therefore, under the most favorable rule for the claimant, be more than two months' services under the new contract.

But, Mr. Glassell having been paid for his year's services, your committee are of opinion he is not entitled to be paid the sum now claimed, or any other sum, for the reason that the United States district attorney had no right to employ him after the expiration of the year, the act of Congress expressly declaring that "*the services of said assistant counsel*" shall "*not continue beyond the exigencies of the service, nor longer than the term of one year from the period of his employment.*"

The letters of Attorney General Cushing do not authorize the inference, as alleged by Mr. Glassell, that "it was his wish that he (Mr. Glassell) should continue his service while the public exigency required it." But if the Attorney General had expressed such a wish, it would be immaterial. Mr. Glassell's employment having been special, under the act of Congress of 10th of January, 1855, the Attorney General of the United States had no more authority to continue it beyond the year than had the district attorney in California. When a special authority is conferred, your committee cannot perceive by what sound rule of construction any one can go beyond it. If the law be transcended, where is the limit, and who shall declare it? To sanction this claim would open a door leading to abuses of the gravest character, and which can only be prevented by adhering to the limit set by the law.

If it were necessary to comment on the testimony offered to prove the rendition of meritorious services, for which compensation is claimed, it might very properly be urged that it does not establish the claim. It is little else than *opinions instead of facts*. The opinion of wit-

nesses as to the value of the services would have been quite proper, if they had stated *facts* by which the correctness of their opinions could be judged. It is the province of Congress to form *opinions* in such cases upon *facts testified*, and without them it is useless to invoke its action.

In the absence of all authority to bind the government, the committee have no hesitation in recommending that the bill do not pass.

JOHN McDONOUGH—LEGAL REPRESENTATIVES OF.

[To accompany Bill H. R. No. 543.]

MAY 4, 1858.

Mr. SANDIDGE, from the Committee on Private Land Claims, made the following

REPORT.

The Committee on Private Land Claims, to whom was referred the memorial of John L. Daniel, agent, praying the confirmation of land claim in Louisiana to the legal representatives of John McDonough, submit:

That on the 22d November, 1837, the register and receiver of the land office at New Orleans, under the act of 6th February, 1855, reported on this case as follows:

"No. 39.—John McDonough claims, in virtue of complete title or patent derived from the government of France, in the year 1760, a tract of land lying in the parish of Jefferson, near the city of New Orleans, and on the same side of the river Mississippi, commencing at a distance of 80 arpents from the said river Mississippi, and running back or in the rear from thence, with the continuous lines of the front track of 22 arpents on the river, a distance of about 49 and $\frac{1}{2}$ arpents in depth, until one of the side lines intersects the other in a point, including (as is more particularly shown by a plan drawn by Benjamin Buisson, a surveyor of said parish,) within said lines the quantity of 177 $\frac{1}{2}$ superficial arpents, more or less." No action was ever taken by Congress upon this report. In 1844, Congress passed an act authorizing the settlement of private land claims in Louisiana by judicial proceedings before the United States courts, in cases where the title set up was *imperfect* but *equitable*.

As there was no tribunal with power to declare definitely what claims were supported by *perfect* titles, John McDonough, as his only recourse at law, brought suit before the United States court in New Orleans to test the validity of his claim to the land now in question. That court, in 1849, gave judgment in his favor. An appeal was taken to the supreme court, where, in 1853, the judgment of the district court was reversed, on the ground that the court below had no jurisdiction of the case under the said law of Congress, inasmuch as

the title of McDonough was claimed to be, and was adjudged to be, a *perfect title*.

In this anomalous condition, thrown out of court because his title was not found to be *imperfect*; with no power to which an appeal can be taken except to the legislative department of the government, the representatives of McDonough ask that Congress will, without delay, confirm their claim to the said tract of land, which has been held in undisputed possession, occupancy and cultivation, since before 1760. And as your committee can suggest no reason why it should not be done, herewith report a bill and ask its adoption.

RICE M. BROWN.

MAY 4, 1858.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Rice M. Brown, respectfully report:

The petitioner, in the year 1846, entered the second regiment of Indiana volunteers, in the capacity of a servant to Captain Henry Davis, of company "F." The petitioner could not be accepted as a soldier on account of lameness; but, in his capacity of servant, he served, with his regiment, during a portion of the Mexican war. He now asks for extra pay and a land warrant.

It is clear that the petitioner cannot come under the acts providing for the relief of soldiers, since he was never mustered into the service. Congress has seen fit to make a very just distinction between those who were thus mustered and those who were not. Your committee, therefore, beg to report adversely to the petition.

ALEXANDER HAYS.

MAY 4, 1858.

Mr. BUFFINTON, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Alexander Hays, respectfully report :

The petitioner, late a lieutenant in the 8th infantry, army of the United States, acted, during a portion of the war with Mexico, as assistant quartermaster. In the settlement of his accounts with the government, a balance is found against him of \$2,050 57, and from this charge he asks to be relieved.

The larger portion of this charge is covered by two drafts amounting to \$1,500 ; and these drafts, it is stated, were not drawn by the petitioner, but are forgeries.

The committee cannot consider this case as coming properly within the jurisdiction of Congress. If the drafts aforementioned are proven to be forgeries, the petitioner cannot be the sufferer ; and, if the remaining charges are susceptible of explanation, such explanation should be made to the accounting officers of the government. In either case, the remedy of the petitioner is at the proper department, and not with Congress.

The committee ask, therefore, that they be discharged from the further consideration of the petition.

CITIZENS OF MARBLEHEAD, MASSACHUSETTS.

[To accompany Bill H. R. No. 546.]

MAY 4, 1858.

Mr. DAVIS, of Massachusetts, from the Committee on Naval Affairs,
made the following

R E P O R T .

The Committee on Naval Affairs, to whom was referred the memorial of citizens of Marblehead, Massachusetts, and others, who served on board private armed vessels during the war of 1812, have had the same under consideration, and respectfully submit the following report :

That, in the opinion of the committee, no valid reason exists which should operate against placing privateersmen on terms of perfect equality with soldiers and seamen enlisted in the regular service of the United States.

Your committee find that, by the passage of the bounty land act of 1855, provision was made for the distribution of land among all who had served the country, either ashore or afloat, during any of the wars in which the United States had been engaged ; and while the provisions of this act were extended so far as to benefit teamsters, who were employed by the army, it did not provide for privateersmen in any way. It would seem, therefore, that the failure to consider their claims might inferentially be regarded as an imputation upon their merits, or a deliberate manifestation of indifference thereto. In the opinion of the committee, either view of the case would be unjust, and they deem it unwise to allow this omission to pass without explanation or correction.

The committee are disposed to recognize the private armed service as the legitimate offspring of our system of government ; the authorities, of course, always keeping such control over it as strictly to guard against lawless adventure on the part of our citizens. We have no occasion for a large naval establishment in time of peace, and in time of war we must, as heretofore, rely mainly upon our marine militia force, which experience has proved to be so reliable and effective in the conduct of all necessary marine adventure. The war of 1812 was brought to a speedy close by the pressure of public sentiment prevailing throughout Great Britain. The occasion of this sentiment was, that American privateers were rapidly destroying her commerce and

affecting, directly and indirectly, every branch of business enterprise. The valor displayed by men on board our privateers was a subject of general commendation throughout the United States, as it was the theme of general complaint amongst those against whose interests it operated.

Upon examination, the committee find that the United States government commissioned privateers and gave to this system of warfare its entire approval. The sale of prizes and prize goods was made under the supervision of United States officers, and large amounts of money were paid into the national treasury out of the proceeds of such sales.

The committee would suggest, that if a few owners of vessels were well paid for the risk of their property in this species of enterprise, it is clear that the seamen were poorly paid in all cases, as would appear palpably if the mode of dealing with them and the plan of a privateer cruise were set forth in this report.

Your committee also submit, that while seamen on board public armed vessels received prize money as well as monthly wages from the government, the privateersmen, with vastly greater risk to life and property, received a meagre proportion of prize money from sales of captured property, but no monthly wages at all from the government.

Your committee find that there were about fifteen thousand men and boys engaged in the private armed service during the war of 1812. Many of them were, from time to time, during the war, on board United States ships, and have consequently received bounty land under existing laws, and have, therefore, no claim under the provisions of this bill; many more have died, leaving no rightful claimants that can come under the proposed amendment to the law of 1855. It is, therefore, to be presumed that, by the lapse of time since the date of service, comparatively few can receive any benefit from its passage.

In the opinion of your committee, these should be provided for, and they accordingly report the accompanying bill, with a recommendation that it do pass.

BENJAMIN WAKEFIELD.

[To accompany Bill H. R. No. 547.]

MAY 4, 1858.

Mr. DAVIS, of Massachusetts, from the Committee on Naval Affairs,
made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of Benjamin Wakefield, have had the same under consideration and submit the following report :

The petition of the memorialist, Benjamin Wakefield, is, that he be allowed the difference of pay between that of a master's mate and boatswain, while performing the duties of the latter grade on board the United States ship "Preble." In an affidavit attached to his petition he deposes that he entered the navy of the United States, at the navy-yard at Brooklyn, New York, on the 24th of June, 1846; that on the 15th of August following he was transferred from the said navy-yard to the United States ship "Preble," Commander W. F. Shields, and by him was ordered to perform the duties of boatswain of said ship, there being no officer of that grade attached to said ship, although the regulations of the Navy Department allowed such an officer; that at the request of Commodore Shields the memorialist wrote to Hon. George Bancroft, then Secretary of the Navy, asking that he should be appointed by the department a boatswain, or an increase of pay, should he be continued in the performance of the duties of that grade; that the Secretary of the Navy in his reply, directed to Commodore Shields, held forth inducements to the memorialist to hold on to the situation to which the said Commodore Shields had appointed him, until a vacancy should occur for promotion in that grade; that the memorialist proceeded to sea in said ship, and on arriving at the port of Callao he again applied, on the 29th of February, 1848, through Commodore Jones, commanding the Pacific squadron, to the Secretary of the Navy for an increase of pay or an appointment as boatswain; that the Secretary of the Navy, under date of 18th of May, 1848, issued an order to Commodore Jones to the following effect: "You are hereby authorized to give acting appointments to Benjamin Wakefield, &c., and drop his rate as master's mate on board the Preble, to take effect on the 1st of January last;"

that subsequent to the receipt of said order the Preble sailed for San Francisco, thence to Monterey and Mazatlan, and thence to China, where, having cruised for a length of time, she returned to the Pacific station, communicating in September, 1849, with Commodore Jones at the Sandwich Islands, and subsequently, in December of the same year, proceeded to San Francisco, California; that on or about the 15th January, 1850, the above named order from the Navy Department to Commodore Jones was communicated to the memorialist for the first time, by Commander Glynn, then in command of the "Preble;" that the memorialist was at that time in bad health, and severely afflicted with rheumatism, induced, as he believes, by a continuous service of three years and seven months, in consequence of which he was compelled to decline said appointment, being entirely unfit for service, and to seek relief on shore; that he was discharged from the said ship on the 19th day of January, 1850.

On the 29th of January last, when this memorial came up for consideration, the committee addressed a letter to the Secretary of the Navy, asking for information as to the allegations of the memorialist in regard to inducements and promises held out to him by the department to retain his situation; in reply to which the following answer was received:

"NAVY DEPARTMENT, *February 3, 1858.*

"SIR: I have the honor to acknowledge the receipt of your letter of the 29th ultimo, enclosing a memorial, with accompanying papers, of Benjamin Wakefield, praying to be allowed the difference of pay between that of a master's mate and boatswain in the navy, and requesting information in the case.

"In July, 1846, the sloop-of-war Preble was fitting out at New York for the Pacific station, and there being no boatswain who could be ordered to her, Commander Shields, commanding the Preble, was authorized by the department, under date of July 6, 1846, to select a suitable person to perform the duties of boatswain, who was to be rated as boatswain's mate, and to be paid at the rate of \$30 per month, during the cruise. Commander Shields, in his reply, July 15, expressed apprehensions that a suitable person to perform the duties of boatswain could not be obtained upon the terms prescribed, and suggested the propriety of assigning the rate proposed, and increasing pay to that allowed to a boatswain of a sloop-of-war. This the department, July 18, hesitated to do, and still hoped a suitable person could be obtained at \$30 per month.

"August 18, 1846, Benjamin Wakefield was rated as master's mate on board the Preble, the pay of which rate was \$30 per month; and in reply to an application from him to be appointed to the grade, (that of boatswain,) the duties of which he was temporarily performing the department, September 18, 1846, stated that it was understood, at the time of his employment, that the department was under no engagement to appoint him, but that when a vacancy occurred his application would be considered. In May, 1846, in reply to a similar request from him, forwarded by Commodore Jones, commanding the Pacific squadron, the department stated to Commodore Jones that

Benjamin Wakefield had no assurance from it of the appointment he claimed, but authorized him (Commodore Jones) to give him an acting appointment as boatswain, and to drop his rating as master's mate on board the Preble, to take effect on the 1st of January, 1848.

"It appears from the memorialist's own statement that this appointment was never bestowed upon him. He was discharged from the Preble January 19, 1850.

"The memorial and papers are herewith enclosed ; also, copies of letters referred to in the foregoing statement.

"I am, very respectfully, your obedient servant,

"I. TOUCEY.

"Hon. THOMAS S. BOOCOCK,

" *Chairman Committee on Naval Affairs,*

" *House of Representatives.*"

Though the memorialist was not apprized of his appointment until more than two years after the date from which the department had ordered it to take effect, and as he had, during all this while, performed all the duties attaching to the said office of boatswain, the committee are unable to see any reasons why he should not be allowed the difference of pay between that of master's mate and boatswain, from the ordered date of his appointment to the time of his discharge, and accordingly report a bill for his relief and recommend its passage.

MARINE HOSPITAL—BOSTON AND CHARLESTOWN.

[To accompany Bill H. R. No. 427.]

MAY 4, 1858.

Mr. WINSLOW, from the Committee on Naval Affairs, made the following

REPORT.

The Committee on Naval Affairs, to whom was referred "A bill authorizing the Secretary of the Treasury to ascertain and pay the balance due on a tract of land heretofore ceded for the purpose of a marine hospital for the district of Boston and Charlestown, to the credit of the naval hospital fund," have had the same under consideration and thereupon report:

It will be seen from the letter of the chief of the Bureau of Medicine and Surgery, transmitted through the Secretary of the Navy, and from extracts from the annexed report of the late Secretary of the Navy, that the hospital estates at Chelsea, Massachusetts, were purchased with the proceeds of the naval hospital fund, which fund was constituted from a tax of twenty cents per month deducted out of the pay of the officers, seamen, and marines of the service. The treasury of the United States has never contributed a dime to this fund. By a clause attached to the general appropriation bill, March 3, 1855, Congress alienated from the estate at Chelsea ten acres of land, and donated the same to the marine hospital of Boston and Charlestown, Massachusetts.

The present bill authorizes the Secretary of the Treasury to ascertain the value of the land thus alienated, and to pass the sum to the credit of the hospital fund.

The committee recommend its passage, with an amendment, which they herewith report.

[From Secretary Dobbin's Annual Report.]

"I invite your attention also to the recommendations of my last report, that some measure should be adopted to secure for the hospital fund the value of the ten acres of land alienated from the hospital estate at Chelsea, Massachusetts, and applied to the purposes of a

marine hospital for the district of Boston and Charlestown, by act of Congress approved March 3, 1855.

"This property was purchased by authority of the Secretary of the Navy in the year 1823, and paid for out of the hospital fund. This fund was established by act of Congress of March 2, 1799, which directed the Secretary of the Navy to deduct twenty cents per month from the pay of every officer, seaman, and marine, and to pay the same quarter annually to the Secretary of the Treasury; and again, on the 26th of February, 1811, Congress enacts that the money collected in virtue of the former law shall be paid to the Secretary of the Navy, Secretary of the Treasury, and Secretary of War, who are appointed a board of commissioners, by the name and style of commissioners of navy hospitals, and shall constitute a fund for navy hospitals; the commissioners are also required to procure, at suitable places, 'proper sites for navy hospitals.'

"By an act approved July 10, 1832, Congress directed the commissioners of the hospital fund to close their accounts as trustees of that fund, and to transfer all balances of cash, or other property belonging to the fund, to the Treasurer of the United States, for the use of the Secretary of the Navy, for expenditures on account of navy hospitals, &c. It then constituted the Secretary of the Navy trustee of the hospital fund, making it his duty to 'direct and control the expenditures out of the navy hospital fund.'

"It was therefore out of a fund created by a tax upon the pay of the navy that the Chelsea estate was purchased, and not with any appropriation by Congress *from the treasury*, as the phraseology of the 6th section of an act making appropriations for the civil and diplomatic expenses of the government, approved March 3, 1855, would imply, when it refers to the land heretofore 'purchased by the United States,' for the purposes of a naval hospital. The United States bought the land through agents appointed under the act of February, 1811, to take charge of a fund which had been already created for certain definite purposes; and the deeds of conveyance are made out in the names of the persons specified in the act, by direction of the then Secretary of the Navy, as commissioner of the naval hospital fund.

"It will thus be seen that the United States had no other connexion with the purchase of the Chelsea estate than to authorize a trusteeship, with certain expressed powers, of a fund raised by a deduction or tax upon the pay of the navy, to be applied to specific purposes, as 'the purchase of sites for naval hospitals, or other means of relief for sick or disabled seamen of the navy.'

"I repeat the suggestion, that application be made to Congress to reimburse the hospital fund for this diversion of its means, or for authorizing the Secretary of the Treasury to transfer the ascertained value of the land to the hospital fund, out of any non-appropriated money in the treasury. The value of the land can be ascertained in such way as the department may deem most advisable."

The law to which the Secretary refers is in the following words:

"SEC. 6. That a tract of ten acres of land heretofore purchased by the United States for the purposes of naval hospital at Chelsea, Massachusetts, be selected and set apart, under the direction of the President

of the United States, for the use of the marine hospital of the district of Boston and Charlestown."

NAVY DEPARTMENT,
Bureau of Medicine and Surgery, April 7, 1858.

SIR: In reply to your communication of the 5th instant, inquiring from what source the "necessary funds were collected for the original purchase of the United States hospital lands at Chelsea, and if any means were resorted to except the tax called the hospital tax, deducted from the monthly pay of officers, seamen, and marines," I have the honor to say, that the original purchase money was derived exclusively from the hospital fund.

It may be pertinent to the inquiry to state, that as early as March 2, 1799, Congress passed an act directing the Secretary of the Navy to deduct twenty cents per month, after the 1st day of September ensuing, from the pay of the officers, seamen, and marines of the navy of the United States, and to pay the same quarter-annually to the Secretary of the Treasury, to be applied to the temporary relief and maintenance of the sick and disabled seamen in hospitals or other proper institutions, and when the fund shall be sufficient, to *purchase grounds, &c.*

In February, 1811, Congress established a board of commissioners, "by name and style commissioners of navy hospitals," consisting of the Secretary of the Navy, Secretary of the Treasury, and Secretary of War, who were empowered to take charge of the funds collected under the act of March 2, 1799, and were required "to procure, at suitable places, proper sites for navy hospitals."

In pursuance of this enactment, Smith Thompson, then Secretary of the Navy, purchased the estate at Chelsea, Massachusetts, on the 11th August, 1823, and directed the agent, William L. Rogers, then a purser in the navy, to have the deed of conveyance made out in the names of the Secretary of the Navy, Secretary of the Treasury, and Secretary of War, "for the time being commissioners of naval hospitals and trustees of the navy hospital fund."

On the 16th of October following, Constant Freeman, then Fourth Auditor of the Treasury Department, notified Mr. Rogers that the purchase money had been remitted and debited to the *navy hospital fund*.

It would thus appear that the hospital fund, accruing from a tax upon the pay of the navy, was the only means resorted to for the acquisition of the property, the best portion of which has been alienated for objects not contemplated by the statutes authorizing this deduction from the pay of the navy.

Very respectfully, your obedient servant,

W. WHELAN.

HON. WARREN WINSLOW,
House of Representatives, Washington.

PARAGUAY.

[To accompany Joint Resolution H. R. No. 29.]



MAY 4, 1858.

Mr. RITCHIE, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred that part of the President's message which relates to the difficulties between the United States and the republic of Paraguay, have had the same under consideration, and beg leave to report:

That in 1845 the government of Paraguay published decrees inviting foreigners to come and reside in that country for the purpose of carrying on manufactures and commerce, and promising to such as would introduce machinery or kinds of industry not before used in that country, exclusive privileges with regard to said machinery and industry for a certain number of years.

Induced by these decrees, a number of citizens of the United States sent out steamboats, and commenced navigating the waters of Paraguay. They erected a wharf; built and put into operation a saw-mill, and established a cigar factory. For a time these enterprises received the protection and encouragement of the government of Paraguay, as promised in its decrees. Subsequently, however, this protection was, without any just reason, withdrawn. Arbitrary and unjust decrees, suggested, apparently, by the personal and private interests of the president of Paraguay, were issued against the said citizens of the United States, who, after being subjected to many indignities and to a total loss of their property, were finally compelled to abandon the country.

[For a detailed account of these events, see documents which accompany Senate Report on this subject, No. 60, 1st session of 35th Congress.]

Your committee report further, that a treaty was, in 1853, drawn up and signed by the minister of the United States and _____ on behalf of the government of Paraguay. This treaty was substantially the same as other treaties entered into by Paraguay with Great Britain, France, and Sardinia, which are now in force. When the treaty with the United States was before the Senate of the United States for ratification, it was found to require some verbal amendments, such as the substitution of the words "The United States of America"—the proper title of our government—for the words "The

North American Union," which had been erroneously inserted in the treaty. These amendments were made, and the treaty thus amended was sent to Paraguay for ratification. When these amendments were submitted to the President of Paraguay, he refused, in a very insulting manner, to ratify them, and closed all correspondence on the subject.—(See documents above referred to.)

Your committee further report that the United States steamship *Water Witch*, Thomas J. Page, lieutenant commanding, was, by direction of the President of the United States and under instructions from the Secretary of the Navy, despatched "to survey and explore the river La Plata and its tributaries," which by the proper authorities had been declared open to commerce. In pursuit of the objects of his expedition, Lieutenant Page obtained the permission of the Argentine Confederation and of the province of Corrientes, and was earnestly requested by the president of the said confederation and the governor of Corrientes, to explore a portion of the Parana river, which forms the boundary between Corrientes and Paraguay. The right to navigate that portion of the Parana was common to Paraguay and the Argentine Confederation. No right or claim to the exclusive use or jurisdiction of this part of the Parana has been alleged on behalf of Paraguay. The right, moreover, to navigate the Parana, so far as the province of Corrientes extends, is secured to the United States by treaty with the Argentine Confederation.

In conformity with the permission and requests aforesaid, Lieutenant Jeffers, in charge of the *Water Witch*, commenced on the 1st day of February, 1855, to make a survey of a part of the Parana river between the Argentine Confederation and Paraguay. On the same day, whilst engaged in making the survey and aground in a channel-way, which was more on the Corrientes than on the Paraguayan side of the river, the *Water Witch* was fired into from the Paraguayan fort *Stapera*.

The *Water Witch* was hulled ten times by the shot from the fort, the wheel was shot away, and Samuel Chaney, the helmsman, was mortally wounded. The fire from the fort was continued until the *Water Witch* was backed down the stream, out of range. This attack was made without any provocation, in waters not under the exclusive jurisdiction of Paraguay, on a ship-of-war of the United States engaged in a purely scientific investigation, under instructions from our own government and in compliance with the wishes of the Argentine Confederation and the province of Corrientes.

No reparation or apology for this outrage has been made by Paraguay; on the contrary, the conduct of the government of Paraguay has been insulting and defiant.—(See documents above referred to and those which accompany the message of the President of the United States.)

In view of all the circumstances, the committee are of opinion that the outrages upon our citizens and the wanton attack upon the *Water Witch* require redress, and that our relations with Paraguay ought to be put on such a footing as will give security against such occurrences as those above mentioned in future.

The committee, therefore, recommend the passage of the accompanying resolution.

CLAIMS OF STATES OF MAINE AND MASSACHUSETTS.

[To accompany Bill H. R. No. 548.]

MAY 4, 1858.

Mr. RITCHIE, from the Committee on Foreign Affairs, made the following
REPORT.

The Committee on Foreign Affairs, to whom was referred certain claims of the States of Maine and Massachusetts, arising under a treaty "To settle and define the boundaries between the Territories of the United States and the possessions of her Britannic Majesty in North America," &c., ratified August 22, 1842, dated August 9, 1842, respectfully report:

That by article fourth of said treaty, (8 Statutes at Large, 574,) the United States agreed to ratify certain titles, and confirm and quiet certain claims to lands. This agreement could only be carried into effect by the agency of Maine and Massachusetts, the States owning or claiming the lands which had been the subject of dispute with Great Britain. Part of the money now claimed by the said States is for expenses incurred in the fulfilment of the said 4th article of said treaty, and as the obligation in the article was incumbent on the United States, the committee are of opinion that the United States are bound to repay to the said States the amount expended by them as aforesaid.

By the fifth article of said treaty, the United States agreed to pay to Maine and Massachusetts all claims for expenses incurred by them theretofore in protecting the disputed territory, &c.—(See Statutes at Large, 8 vol., page 575.) The remaining claims of those now presented by Maine and Massachusetts arise under this fifth article, and in the opinion of the committee they ought to be paid by the United States.

Appropriations to the said States, for claims similar to those now presented and arising under the said treaty, have heretofore been made by Congress, and the validity of the claims has been uniformly recognized by the United States.

The following acts of Congress are referred to in which appropriations similar to those now asked for have been made:

Act of 3d March, 1843, section 5, (Statutes at Large, 5 vol., p. 623.)
Act of 17th June, 1844, (5 Statutes at Large, 695.) Act of 3d March, 1851, (9 Statutes at Large, p. 626.)

This act allows interest to Maine on money borrowed and expended

by that State in protecting the frontier during the years 1839, 1840, and 1841.

Act of 31st August, 1852, (10 Statutes at Large.) This act directs the payment of balances due to Maine and Massachusetts, and also directs the payment of interest.

The committee therefore recommend the adoption of the accompanying bill.

E. GEORGE SQUIER.

[To accompany Bill H. R. No. 553]

MAY 5, 1858.

Mr. SICKLES, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the memorial of E. George Squier, of New York, submit the following report:

That Mr. Squier was commissioned chargé d'affaires of the United States to Guatemala on the 2d of April, 1849; that, in addition to this commission, he was formally accredited as chargé d'affaires to the republics of San Salvador, Nicaragua, Costa Rica, and Honduras, with full powers to negotiate treaties with each of these governments; that he did negotiate treaties with Guatemala, San Salvador, Nicaragua, Costa Rica, and Honduras, and represented fully and faithfully the interests of the United States at each of these governments, and his services were regarded by the President and the Department of State as of great importance, at a most interesting juncture of our relations in that quarter, and especially in connexion with the negotiations which were going on here at the same time with Great Britain. The memorialist claims an outfit to each of these governments to which he was accredited, and also the amount of salary from the date of his leaving Central America (28th of June, 1850) to the date of his ceasing to be employed in the service of the government, (13th of September, 1850.)

The precedents, as afforded by the legislation of the country, show, that when a minister has been accredited to one government, and sent by instructions from the State Department to another, that an outfit has been considered proper, and has been appropriated by Congress.

Mr. Murray, in 1800, was minister resident of our government at the Hague; he was specially sent to Paris, for which he was allowed an outfit of \$9,000.

Mr. Madison, in 1804, was our minister at London, and was sent specially to Spain, and was allowed an outfit of the same sum.

In 1806 Mr. Pinckney, of Maryland, was appointed minister to Russia; he was required to present letters of credence at Naples, for which he was allowed \$9,000 expenses in form of an outfit.

In 1854 Hon. John Bozman Kerr, of Maryland, was chargé d'affaires to Nicaragua, and was instructed to proceed to Guatemala with letters of credence; for this service he was allowed an outfit corresponding to his grade of \$4,500.—(See U. S. Statutes at Large, X 291.)

In 1852 Hon. Robert C. Schenck was minister of Brazil. He received powers and credence to proceed to the Argentine Confederation and to Uruguay, which he did, and negotiated treaties with those States, for which services he received two additional outfits of \$9,000 each.—(See U. S. Statutes at Large, X 559.)

In 1852 Hon. John S. Pendleton, of Virginia, was minister at Buenos Ayres. He was commissioned, jointly with Mr. Schenck, to proceed to the Argentine Confederation, and negotiated two treaties with the republics of Paraguay and Uruguay, for which he received two corresponding outfits.—(See Report of Committee on Foreign Relations, House, 34th Congress, 1st session, No. 1; acts of Congress of 1st session of 34th Congress, private, page 5.)

Under these precedents, your committee, while they do not concede the amount claimed by the memorialist for full outfits to each of the five republics to which he had letters of credence, yet for those to which he actually went, and with which he negotiated important treaties, they think it just and proper he should be allowed an outfit corresponding to his grade of service. It does not appear from the statement of the memorialist that Mr. Squier actually did go to the capitals of Guatemala or Costa Rica, although he did negotiate a treaty with the latter republic, yet he did proceed to and remain at the capitals of Nicaragua, San Salvador, and Honduras, and negotiated treaties with each of these powers, and for these services he should be paid.

He has already been allowed one outfit. Your committee therefore report a bill for two more at the grade of his service, \$9,000, and also his salary, which is equitably due, from the date of his leaving Central America on leave (28th June, 1850) to the date of his recall, (13th September, 1850,) \$937.

The communication of the Secretary of State is herewith communicated, marked A.

A.

DEPARTMENT OF STATE,

Washington, April 12, 1858.

SIR: I have the honor to acknowledge the receipt of your note of the 7th instant, enclosing the memorial of Mr. E. George Squier, setting forth the nature and extent of his services in Central America, whilst residing there in a diplomatic character, and applying for a sum equal to the outfit of a chargé d'affaires to each of the republics to which he was accredited and with which he opened relations.

In compliance with your request that the Committee on Foreign Affairs be furnished with such evidence relating to said services as may be afforded by the files of this office, I have to communicate the following data:

Mr. Squier was commissioned as chargé d'affaires of the United States to Guatemala on the 2d April, 1849, during the recess of Congress, which appointment was duly confirmed by the Senate in March, 1850.

Besides the letter of credence which was furnished to him in his character of chargé d'affaires to Guatemala, Mr. Squier was formally accredited to the republics of San Salvador, Nicaragua, Costa Rica, and Honduras, by separate letters to the ministers for foreign affairs of those governments, which credentials were of the same scope and effect as that addressed to the minister for foreign affairs of Guatemala.

The President also conferred upon Mr. Squier, in due form, full and separate powers to negotiate treaties with the governments of Guatemala, San Salvador, Nicaragua, Honduras and Costa Rica. With the first four of these republics Mr. Squier concluded important treaties, two of which were submitted by the President to the Senate for ratification; one of the others was withheld only because it had been anticipated by a different negotiation, and the fourth for political reasons. Mr. Squier's services in Central America were regarded by the President and by the department as of great importance and value, at a most interesting juncture of our relations in that quarter, and especially in connexion with the negotiations which were going on here at the same time with Great Britain. He was informed on the 25th October, 1849, that "the President has been gratified with the intelligence and activity evinced" by him; on the 20th November, that the department "justly appreciated his energy, zeal and ability," and he was "especially thanked for the valuable information contained in his despatches." On the 7th May, 1850, he was told that his "conduct in the negotiation of the treaty with Nicaragua, which was the great business of his mission, has been highly approved by his government." In reply to an application for leave of absence, the department stated to him that "the energy and zeal which he had exhibited in the public service and the state of his health entitled him to it." Mr. Squier accordingly came home under that leave; whilst here, a new administration was organized, and he was superseded.

The precedents referred to in the memorial of Mr. Squier are pertinent to his application. The "letters of credence" and "full powers" bestowed upon the functionaries named, were documents of precisely the same character as those hereinbefore mentioned as furnished to Mr. Squier.

The information communicated to the department by the memorialist was of the most varied and important character. His despatches were accompanied by maps, memoirs, and sketches, illustrative of the geographical and physical, as well as of the political condition of the countries which he visited; and by his contributions in these respects, as well as by his more immediate diplomatic functions, he has largely promoted the existing relations between our own country and Central America, and the benefits legitimately resulting therefrom.

I return herewith Mr. Squier's memorial; and have the honor to be, sir, your obedient servant,

LEWIS CASS.

Hon. D. E. SICKLES,
(Of Committee on Foreign Affairs.)
House of Representatives.

WILLIAM G. MOORHEAD.

MAY 5, 1858.

Mr. CLAY, from the Committee on Foreign Affairs, made the following

REPORT.

The Committee on Foreign Affairs, to whom was referred the memorial of William G. Moorhead, make the following report:

The memorialist claims for services as acting chargé d'affaires at Chili, from the surrender of the archives by William Crump, late chargé d'affaires, November 1, 1847, to the presentation of Seth Barton, his successor, January 10, 1848, and to like services from the surrender of the archives by Seth Barton, 22d May, 1849, to the recognition of Bailie Peyton, 18th February, 1850, amounting to \$1,162 20.

It appears from the letter of Mr. Crump, a copy of which accompanies the memorial, that the archives of the legation were left in the custody of Mr. Moorhead, United States consul, at Valparaiso; Mr. Barton, who succeeded Mr. Crump, arrived at his post on 1st January, 1848, and, in his first despatch, advises the State Department that he "had received the papers and books of the legation from Samuel F. Haviland, of Santiago, who had, from time to time and for years, appropriated apartments in his private dwelling for their accommodation." Independent of this discrepancy of testimony, the custody of the archives of legation could not involve any diplomatic services, upon which this claim is based. "Mr. Moorhead," says the Secretary of State, "was not authorized to perform any diplomatic services, nor is there evidence in the department that he was required to do so by the exigencies of public business."

This case has been presented again and again to Congress since 1852, and in each case the Committee on Foreign Affairs have been discharged from consideration of the subject, and your present committee pray the same.

MILITARY ROADS IN WASHINGTON TERRITORY.

[To accompany Bill H. R. No. 58.]

MAY 10, 1858.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred House Bill No. 58, "For the completion of military roads in the Territory of Washington," have, according to order, had the same under consideration, and report the same with amendments.

They submit, as part of their report, the following correspondence:

WAR DEPARTMENT,
Washington, May 5, 1858.

SIR: Referring to my letter to you of the 17th February last, I have now the honor to transmit a communication from the officer in charge of the Topographical Bureau, enclosing a copy of Lieutenant G. H. Mendell's report relative to the construction of certain military roads in the Territories of Oregon and Washington.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

Hon. C. J. FAULKNER,
*Of Committee on Military Affairs,
House of Representatives.*

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, May 4, 1858.

SIR: In addition to the information furnished by this bureau on the 13th February last, in answer to a letter from the Hon. Mr. Faulkner, of the Military Committee of the House of Representatives, in relation to the construction of certain military roads in Oregon and Washington Territories, I have the honor of transmitting herewith a copy of a report from Lieutenant G. H. Mendell, corps topographical

engineers, the officer in the immediate charge of the construction of roads in these Territories, giving his views in regard to those referred to in the letter of Mr. Faulkner.

Respectfully, sir, your obedient servant,

J. C. WOODRUFF,

Capt. Top. Eng., Asst in Charge.

HON. JOHN B. FLOYD,
Secretary of War.

SAN FRANCISCO, CALIFORNIA,
April 2, 1858:

MAJOR: In accordance with your instructions, I submit the following report on Bills Nos. 56, 58, and 178.

1st. Bill No. 56, in relation to the Astoria and Salem military road.

In reference to this subject I, have nothing to add to my recommendation in my last annual report, which, on account of the unevenness of the country, as also of the dense timber with which it is covered, recommends an additional appropriation of \$30,000.

2d. Bill No. 58, military road from Fort Steilacoom to Fort Walla-Walla, Washington Territory.

From what I have been able to learn by inquiry from the most reliable sources within my reach, I am quite of the opinion that the sum contemplated would not be sufficient at the present time to give the road that permanence which is desirable. It is my belief that no wagon has ever passed over this route from the west, and that fifty miles of the road east of Porter's prairie (which is at the lower crossing of White river) will require a large expenditure in grading, cutting, and bridging, to make it practicable. Five hundred dollars per mile I should regard as a low estimate—in all, \$25,000.

In a military point of view, all roads crossing the Cascade mountains are of paramount importance. The largest and most formidable tribes of Indians on our borders, yet unsubdued, occupy the valleys of the Yakima and other adjacent streams. The ties connecting these Indians with those on the Sound are of a close nature, owing to marriages and other causes, and the feeling of the tribes on the Sound may be generally inferred from the attitude of those living east of the mountains. The time will soon come when the subjection of the tribes living on the waters of the Columbia will be essentially necessary, and it is probable that this will be attended by an Indian war on the Sound. In this contingency, it will readily appear that the means of communication by way of the mountains cannot be too good.

3d. Bill No. 58, military road from Fort Vancouver to Fort Steilacoom, Washington Territory.

In my last annual report an estimate of \$15,000 was submitted to continue the road from the Cowlitz plains to Monticello, near the mouth of Cowlitz river. To continue the road up the Columbia from

the Cowlitz to Vancouver, a distance of 50 miles, the minimum estimate submitted is \$500 per mile—in all, \$25,000

4th. Bill No. 58, military road from Fort Vancouver to Fort Dalles, Oregon Territory.

The amount estimated for by my predecessor for the improvement of the trail between the points named would doubtless be sufficient for the purpose; and as the quartermaster's department annually send many animals from one post to the other, generally by steamboats, at the rate of \$8 or \$10 per head, a large expense might be saved by this improvement, as then they could be sent by the trail.

5th. Bill No. 178, road from the mouth of the Columbia river, by Shoalwater bay and Gray's harbor, to Olympia.

I have no reliable information of sufficient extent to enable me to speak with entire confidence on this road. The condition of the road touching Gray's harbor will much increase its length or necessitate its location through a section of country quite unknown, viz: between Gray's harbor and Olympia. A road from the mouth of the Columbia river, by way of Shoalwater bay, would be about 70 miles in length, intersecting the Vancouver and Steilacoom military road, at Davis', six miles south of Skookum Chuck. To take in Gray's harbor, the road would be from 120 to 140 miles in length. The routes are approximately located on the accompanying map. A minimum estimate of the cost of construction would be \$500 per mile. The country is heavily timbered, and is also quite mountainous.

I quite concur in the views of the bureau, as expressed in the report of February 13, 1858, as to the importance of these roads.

6th. Bill No. 178, military road from Olympia to Fort Townsend.

Little is known of the country to be traversed by this route. It is mountainous, and doubtless, like most other sections of the Territory, is heavily timbered. The distance is from 100 to 120 miles; \$500 per mile will be necessary for its construction.

7th. Bill No. 178, military road from Seattle to Fort Colville, \$50,000.

The route to be followed by this road would doubtless be by the Snoqualmoo Pass, which has been proved to be the best through the Cascade mountains, being practicable when none others are.

The country, for perhaps 100 miles east of Seattle, is heavily timbered and mountainous. The amount proposed will doubtless be sufficient to make a passable wagon road over the line.

This route I would suggest as one of the most important of those proposed. It is certain that very considerable settlements will be made at and near Fort Colville, and, as is observed by the bureau, Seattle is a natural outlet of the country. A better road, at a less expense, could be made on this route than on any other over the Cascade mountains, and would be, in my opinion, most essential in case of Indian hostilities, which hostilities may always be expected. A map, sufficiently accurate to show the position of some of the proposed routes, is transmitted.

With more time and opportunity to collect facts, much more could be said in favor of these roads, and it is to be regretted that it is impossible now to do justice to the subjects.

One can scarcely be wide of the mark in building roads in Washington Territory, where the surface of the country presents so many difficulties, and where the population is too sparse to overcome them; and it may be said that expensive wars may be anticipated with the Indian tribes there for many years to come.

During the last war upon the Sound, much difficulty was experienced, owing to the ignorance of all as to the topography of the country, and to the want of communication. Much delay and expense were entailed upon the government from these causes, and I would regard the construction of these roads as measures of economy, in view of an almost certain recurrence of this state of affairs.

I am, sir, very respectfully, your obedient servant.

G. H. MENDELL,

1st Lieutenant Topographical Engineers.

Major HARTMAN BACHE,

*Top. Engineers, Superintendent of Military Roads,
San Francisco, California.*

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, February 13, 1858.

SIR: I have the honor to acknowledge your direction to report upon the Bills Nos. 56, 58, and 178, referred to in the letter of the Hon. Mr. Faulkner, of the Military Committee of the House of Representatives, of the 2d instant.

1st. Bill No. 56, in relation to the military road from Astoria to Salem, Oregon Territory.

I beg leave to refer to the annual report of this bureau, and the report of the engineer officer in charge, appended thereto, in which will be found the estimate for an additional appropriation of \$30,000 for the purpose of rendering the road practicable for wagons.

2d. Bill No. 58, military road from Fort Steilacoom to Fort Walla-Walla, Washington Territory.

This road was opened under the direction of the War Department. The officer in charge recommended an additional appropriation of \$10,000, which, "in connexion with what has already been expended, will give to the work a permanence and stability that it justly demands, even at the present time, as the only military and commercial thoroughfare into this portion of the Territory." He also recommends that the amount expended by the citizens of the Territory in opening the road from Steilacoom to the mountains, the greater part of which was adopted as the military road, be refunded. It is believed that this amount will not exceed \$10,000. It is therefore recommended that this amount, or so much thereof as may be necessary, be appropriated for this purpose.

The amount, therefore, required for the Fort Steilacoom and Fort Walla-Walla military road is \$20,000.

3d. Bill No. 58, military road from Fort Vancouver to Fort Steilacoom.

In the annual report of this bureau will be found the estimate of the engineer officer in charge, amounting to \$15,000.

The engineer reports that a good ordinary wagon road from the Cowlitz plains to Fort Steilacoom will be completed by the 1st of November, 1857.

"The next step to be taken on this route is to continue the road to the Columbia river."

"In a military point of view, it is of great importance that there should be a good road over this route."

"It is respectfully recommended that an additional appropriation be asked for, which, in addition to the balance on hand, will be sufficient to construct a good road from the Cowlitz plains to Monticello, a distance of 30 miles. The estimate is \$15,000."

No bridges appear to be included in this estimate.

4th. Bill No. 58, military road from Fort Vancouver to the Dalles.

The construction of the road, as shown by the survey and reports, can only be effected at an enormous cost, say \$1,000 per mile. The engineer officer in charge reports, "good steamboat navigation from Vancouver to the Cascades, a good road across the 'Portage,' and a continuation of steamboat navigation thence to the Dalles, certainly fulfil all the conditions of a military road from the Dalles to Columbia barracks, and is the only practicable route."

He recommends a plank road across the Portage, and estimates the cost thereof at..... \$13,799

He also estimates for "improving the trail from Columbia barracks to the Dalles of the Columbia, for a dragoon road and for pack animals".....

8,000

Total..... 21,799

The engineer officer now in charge reports, (see annual report of this year,) "there is an excellent summer road."

"The quartermaster's department have made use of the road ever since its construction."

The estimate should doubtless be increased to \$17,000, in order to cover all expenses of repairs of the road to prepare it for planking. In a military point of view, the dragoon trail is of great importance. The total amount of the estimate will then be \$25,000.

5th. Bill No. 178, military road from some eligible point at or near the mouth of the Columbia river, *via* Shoalwater bay and Gregg's harbor, to Olympia, \$60,000.

There is no information in the bureau in reference to the cost of this road.

In a military point of view, the road is essential; the troops at the forts, either Steilacoom or Vancouver, could thus be readily thrown upon the coast to control the Indian bands in that quarter.

6th. Bill No. 178, military road from Olympia to the military post near Fort Townsend, \$50,000.

There is no information in the bureau in reference to the cost of this

road. In a military point of view, its importance cannot be questioned.

The construction of this and the roads above referred to would tend to facilitate settlement, the result of which would be such a force of settlers along the roads as would render military protection unnecessary.

7th. Bill No. 178, military road from Seattle to Fort Colville, \$50,000.

There is no information in this bureau that will enable the estimate of cost of construction to be arrived at. As a portion of the defence of the Territory, the construction of this road is deemed very essential.

Seattle is the natural port and outlet of the Yakima country east of the Cascades, and the mining region about Fort Colville. The Indian tribes are reputed to be numerous and warlike.

It cannot be questioned that all the roads are needed for the movement of troops, and are recommended for favorable consideration.

Accompanying the bills above referred to is a petition from citizens of Nebraska Territory, asking an appropriation for the construction of a road from Nebraska City to Fort Kearney, in said Territory.

Nothing is known in this office in regard to the route contemplated by the petitioners for a road between the points named; but if, as represented by them, a saving of forty miles in the transportation of military stores to Utah would be effected by the construction of such a road, it would seem to be a matter deserving consideration.

Respectfully, sir, your obedient servant,

J. J. ABERT,
Colonel Corps Engineers.

Hon. JOHN B. FLOYD,
Secretary of War.

KEEPERS OF LIFE SAVING STATION-HOUSES.

MAY 10, 1858.—Ordered to be printed.

Mr. J. GLANCY JONES, from the Committee on Ways and Means made the following

REPORT.

The Committee on Ways and Means, to whom was referred the following resolution viz: "Resolved, That the Committee on Ways and Means be directed to enquire into the propriety of making an appropriation for the payment of the keepers of the life saving station-houses on the coast of New Jersey and New York, as was completed by the passage of the act authorizing the appointment of said keepers in December, 1854," beg leave to report:

That under the provisions of the act of Congress, entitled "An act for the better preservation of life and property from vessels shipwrecked on the coasts of the United States," approved December 14, 1854, the following appropriations have heretofore been made:

By the "Act making appropriations for light-houses, light-boats, buoys, &c., and providing for the erection and establishment of the same and for other purposes," approved August 18, 1856.

"For compensation of two superintendents for the life stations on the coasts of Long Island and New Jersey, three thousand dollars."

"For compensation of fifty-four keepers of stations, at two hundred dollars each per annum, ten thousand eight hundred dollars."

By the "Act making appropriations for certain civil expenses of the government for the year ending the 30th June, 1858," approved March 3, 1857.

"For compensation of two superintendents for the life stations on the coasts of Long Island and New Jersey, two thousand and sixty-one dollars and fourteen cents."

"For compensation of fifty-four keepers of stations, seven thousand one hundred and twenty-three dollars and eighty cents."

Thus, it will be perceived, that appropriations have been made "for the payment of the keepers of the life saving station-houses on the coasts of New Jersey and New York, as was contemplated by the passage of the act authorizing the appointment of said keepers in December, 1854," to the 30th June, 1858, and, further, that the Secretary of the Treasury in the estimates of appropriations required

for the support of the government for the fiscal year ending June 30, 1859, on folio 40, submits the following items:

"Compensation of two superintendents for the life saving stations on the coasts of Long Island and New Jersey, \$3,000."

"Compensation of fifty-four keepers of stations, at \$200 each, \$10,800."

For which provision is made in (Bill H. R. No. 200) "making appropriations for sundary civil expenses of the government for the year ending the 30th June, 1859," (page 4, lines 75, 76, 77, 78, and 79,) reported by this committee on the 21st January, 1858, thus rendering any further action unnecessary, and beg to be discharged from its further consideration.

REGULATION OF RIGHT OF SUFFRAGE IN THE TERRITORIES.

[To accompany Bill H. R. No. 119.]

MAY 10, 1858.

Mr. ZOLLICOFFER, from the Committee on the Territories, made the following

REPORT.

The Committee on the Territories have had under consideration the bill to regulate and make uniform the right of suffrage in the Territories of the United States, and they are of opinion that none but *citizens* of the United States—that is, those who owe allegiance to the government—should be permitted to exercise any rights of political sovereignty within such Territories. Some of the considerations which influence them to this opinion they beg leave now to state, as follows:

In expounding the letter of the Constitution of the United States, the Supreme Court has decided that “the words ‘*people of the United States*’ and ‘*citizens*’ are synonymous terms, and mean the same thing. They both describe the *political body* who, according to our republican institutions, *form the sovereignty*, and who *hold the power and conduct the government* through their representatives.” In the preamble to the Constitution it is declared, that the “people of the United States,” for the benefit of *themselves and their posterity*, have ordained and established this Constitution. The court has also declared that the territory of the United States has been “acquired by the general government as the *representative and trustee of the people of the United States*, and it (the territory) must therefore be held in *that character for their common and equal benefit*.” It therefore appears as a settled interpretation of the Constitution, that the *citizens* of the United States, having ordained and established the government and acquired the territory for “their common and equal benefit,” are the real *political sovereignty*, entitled to “*hold the power and conduct the government*.”

Congress is empowered to frame organic laws for the Territories; in doing so, it is bound, by the highest considerations of duty, to take care that *no other people* than the “*people or citizens*” of the United States—that is, “the *political body who form the sovereignty*” and *own the territory*—shall acquire the power to control or conduct the governments established (for the benefit of the citizens) over the Territories of the United States.

Congress is empowered to establish "a uniform rule of naturalization;" that is, a uniform rule or process by which foreigners are to be *clothed with the rights of citizenship*. Should they adopt any other than a *uniform* rule, it would clearly be in violation of the Constitution of the United States. If, for example, in certain localities, it should confer upon *aliens* political rights of citizenship, and in others strictly withhold from them all such rights, it is clear that such rule of action would not only be *not* uniform, but contrary to the plain spirit of the Constitution. This is the precise state of things now existing in the Territories. In some of them aliens are permitted to vote and to hold political office; while in others they are wholly debarred from exercising such prerogatives of citizenship. This irregularity can only be remedied by a general law of Congress, applicable to all the Territories. Such a law would be just, wise, and conformable to the Constitution; and the committee are of opinion that one should be promptly enacted prohibiting any but citizens of the United States (naturalized and native born) from voting or holding office in the Territories.

In a popular government such as ours, where the voters at the ballot-box actually control and give direction to the government, the rights of voting and of holding office are of the highest political magnitude, determining, as they may, forever, the destiny of the government itself. If our fathers, indeed, established this government for the benefit of *citizens of the United States*; if the Territories have been acquired for the common and equal benefit of such *citizens*, and they, the citizens, are, by the Constitution, acknowledged to be the "*sovereign power*" entitled to "*conduct the government*," by what rightful authority can Congress presume to extend these potential rights of citizenship to unnaturalized *aliens*, who *owe no allegiance* to the government, who cannot be required to take up arms in its *defence*, and who could not be punished for *treason*, should they *arm and wage war against it in time of war*?

Does any one question that the rights of suffrage and of holding office are peculiarly and especially political rights pertaining to citizenship? They are so here, in the very nature of our government, and have ever been so held even in governments not purely elective, as ours is. Aristotle defined a citizen to be one who participates in the *judicial and legislative powers in a State*. In the Roman political system, in England, and in the United States, *all* the citizens have *not*, at all times, been permitted so to participate in the political powers of the State—some citizens being temporarily deprived of the right of suffrage and of eligibility to certain offices on account of not possessing a freehold; but in no civilized country of the world, other than the United States, has *any description of persons other than citizens ever been allowed the rights of suffrage and of holding office*. In this government, more especially than in any other, the rights belonging to political sovereignty ought to be restricted to those who owe to the government *allegiance*. This is a strictly *elective* government, with a written constitution, averring in its very text that it is designed for the benefit of its *citizens*. It should, therefore, in all its elective processes, be held strictly and perfectly

under the control of this body of citizens. Its Territories are confessedly acquired for their benefit; its mission is avowedly to secure to them "the blessings of liberty;" and surely its control, and the power of control in its Territories, should not be loosely entrusted to other and strange hands. When it becomes necessary, Congress has the right to establish temporary governments over the Territories; in doing so, it must act within the scope of its constitutional authority. "The powers of the government," says the Supreme Court, "and the rights and privileges of the citizens, are regulated and plainly defined by the Constitution itself. And when the territory becomes a part of the United States, the federal government enters into possession in the character impressed upon it *by those who created it*. It enters upon it with its powers over the citizen strictly defined and limited by the Constitution, from which it derives its own existence, and by virtue of which alone it continues to exist and act as a sovereignty. It has *no power of any kind beyond it*; and it cannot, when it enters a Territory of the United States, put off its character and assume *discretionary or despotic powers which the Constitution has denied to it*. It cannot create for itself a new character, separated from the *citizens of the United States*, and the *duties it owes them under the provisions of the Constitution, with their respective rights defined and marked out*." The right of the citizen to "hold the power and conduct the government" cannot be ignored, because it is one of those rights which are "plainly defined by the Constitution." When the federal government "enters into possession" of the Territory, it does so as a "trustee" for the "people of the United States." It has "no power of any kind beyond it;" it cannot confer political power upon *aliens* in any other way than by a "uniform rule of naturalization." It cannot give to aliens the rights (belonging to the people or citizens) of suffrage and of holding office, by which they may "*hold the power and conduct the government against the citizens*." It "cannot create for itself a new character separated from the *citizens of the United States* and the *duties it owes them under the provisions of the Constitution*." For these reasons the committee are of opinion that a general law should be enacted, applicable to all the Territories, restricting the rights of suffrage and of holding office to citizens of the United States; and they therefore recommend the passage of the accompanying bill.

MILITARY ROAD FROM FORT UNION TO SANTA FÉ.

[To accompany Bill H. R. No. 549.]

MAY 11, 1858.

Mr. FAULKNER, from the Committee on Military Affairs, made the following

REPORT.

The Committee on Military Affairs, to whom was referred bill H. R. No. 549, for the completion of the road from Fort Union to Santa Fé, have, according to order, had the same under consideration, and recommend it to the favorable consideration of the House.

They submit the following correspondence and estimate of cost as a part of their report:

MILITARY DEPARTMENT OF NEW MEXICO,
Santa Fé, New Mexico, March 9, 1858.

GENERAL: For the purpose of carrying out the views of the Hon. Mr. Otero, as expressed to you in his letter of the 19th November, 1857, I would respectfully suggest that he be requested to ask from Congress the appropriation of the following named sums, to wit:

1st. For the completion of the "military road from Fort Union to Santa Fé," in the Territory of New Mexico, as by estimate in detail herewith submitted, \$35,000.

2d. For explorations and surveys, to ascertain the most feasible routes for, and the probable expense of constructing, the following named military roads and bridges in the Territory of New Mexico: *Provided*, That such sums as may remain of said appropriations, after paying the expenses of surveys, explorations, and estimates, shall be applied towards the construction of said works respectively, viz:

Military road from Fort Union to Taos.....	\$10,000
Military road from Taos to Fort Massachusetts.....	10,000
Military road from Santa Fé to Fort Stanton.....	20,000
Military road from Albuquerque to Fort Stanton.....	17,500
Military road from Albuquerque to Fort Defiance.....	15,000

3d. The sum of ten thousand dollars (\$10,000) for minute examinations and surveys and the preparation of estimates for constructing

2 MILITARY ROAD FROM FORT UNION TO SANTA FE.

permanent bridges across the Rio Bravo del Norte, at or near the following named points, to wit:

- One at or near Fort Massachusetts;
- One at or near Cañada;
- One at Albuquerque or at Ysleta, and
- One at a suitable point in the county of Doña Ana.

There are doubtless many points in the vicinity of the above named roads where it is desirable to have some reliable means of furnishing permanent supplies of water, but it may probably be deemed expedient to await the result of the experiments in artesian well-boring (now in progress) before deciding upon the plan for effecting this end.

The fact of the "road from Fort Union to Santa Fé" being a part of the great mail route from Missouri to the largest settlement in the Territory of New Mexico, and it being the only portion of the route upon which serious natural obstacles to easy transit exist, is deemed of sufficient importance to justify the asking for such a sum as will make the road at least equal, in facility for travelling, to the natural road across the plains, which constitutes the chief portion of the route.

All of which is respectfully submitted by your most obedient servant,

J. N. MACOMB,
Captain Topographical Engineers.

Brigadier General J. GARLAND,
Commanding Department, New Mexico.

Estimate for the completion of the road from Fort Union to Santa Fé, New Mexico.

From Santa Fé to the Arroyo Hondo, 5 miles and 3 chains...	\$1,500
From the Arroyo Hondo to the Rock Corral, 4 miles and 26 chains.....	4,500
From the Rock Corral to El Cañon de Apache, by present main road 4 miles and 59 chains, and by trail which can be improved, 2 miles and 39 chains.....	8,500
From the mouth of Cañon de Apache to El Arroyo de Pecos, by present road, 10 miles and 73 chains, and by trail which can be improved, 9 miles and 64 chains.....	10,500
From El Arroyo de Pecos to San José, crossing of the Pecos river, 18½ miles.....	7,500
From San José to Tecalote, 15½ miles.....	6,500
From Tecalote to Las Vegas, 11 miles.....	3,500
From Las Vegas to Fort Union, by one route 30 miles, by another 27 miles.....	4,500
Bridges across the rivers Pecos, Moro, Sapello, and Gallenas, \$1,000 each.....	4,000
	51,000

From which deduct amount appropriated for this road by act of 3d March, 1855, No. 58, chap. CLXIX.....	\$16,000
Making amount requisite to perfect this road	<u>35,000</u>

Respectfully submitted to General Garland,
J. N. MACOMB,
Captain Topographical Engineers.

SANTA FÉ, NEW MEXICO, *March 9, 1858.*

SANTA FÉ, *March 14, 1858.*

DEAR SIR: An answer to your letter of the 19th November has been delayed for want of the necessary information upon which to base your action. You will receive herewith a letter from Captain Macomb, topographical engineers, enclosing to me an estimate for roads, bridges, &c., which I think very reasonable; the original estimate has been sent to the proper bureau at Washington.

The people of Mesilla are likely to drive us into another war with the Apaches; for particulars see Santa Fé Gazette. The Kiowas begin to give me some uneasiness. I have sent one of their chiefs, a prisoner, to them with a strong talk.

Most truly yours,

JOHN GARLAND,
Brevet Brigadier General U. S. A.

Hon. M. A. OTERO,
Washington.

BUREAU OF TOPOGRAPHICAL ENGINEERS,
Washington, May 5, 1858.

SIR: As requested by you this morning, I have the honor of transmitting herewith a copy of Captain Macomb's letter of the 11th March, 1858, and a copy of the estimate therein referred to.

Respectfully, sir, your obedient servant,

J. J. ABERT,
Colonel Corps of Top. Engineers.

Hon. M. A. OTERO,
House of Representatives.

MILITARY DEPARTMENT OF NEW MEXICO,
Santa Fé, March 11, 1858.

COLONEL: I have the honor herewith to forward to the bureau a copy of an estimate which I have been called upon to furnish to the general

commanding this military department, to accompany his reply to a letter addressed to him by the Honorable Mr. Otero, delegate to Congress from this Territory, in relation to military roads and bridges, &c.

The road between Fort Union and this point has been carefully examined by me, with the aid of my principal assistant, who has drawn up a careful estimate for perfecting the road, which I hope may be approved, and the amount granted.

The other matters referred to, it will be observed, are all new, that is, for which no appropriations have heretofore been granted ; I have, therefore, suggested that the appropriations should be so made as to authorize and require the obtaining of full information before any work is decided upon.

The appropriations heretofore made for roads in this Territory have simply given a sum for each road, generally, quite insufficient for accomplishing the object, and, at the same time, leaving the officer in charge in a state of doubt as to what expenditures would be allowed for the necessary explorations. As I know of no fund to pay for such special examinations, I have suggested that these important preliminaries may be provided for in the drawing up of the appropriation bills, as will appear in my estimate.

I remain, very respectfully, your most obedient servant,

J. N. MACOMB,

Captain Topographical Engineers.

Colonel J. J. ABERT,

Comd'g Corps Top. Eng's, Washington, D. C.

BASIL MIGNAULT—CHILDREN OF.

[To accompany Bill H. R. No. 563.]

MAY 11, 1858.

Mr. HICKMAN, from the Committee on Revolutionary Pensions, made the following

R E P O R T .

The Committee on Revolutionary Pensions, to whom was referred the petition of Peter M. Mignault, report :

That it appears, from the papers and testimony transmitted from the Pension department, that Basil Mignault, a resident of Chambly, in the county of Kent, Lower Canada, on the 20th of November, 1828, made and filed his application for a pension under the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution," approved on the 15th day of May, 1828. That, by the rules of the department, the claimant was required to make oath in support of his declaration, in addition to other evidence offered.

The applicant in this case made oath that, in the month of September, 1775, he joined the American army, under General Montgomery, at St. John's, Lower Canada; that he was commissioned by General Montgomery a lieutenant in Captain Arnold's company, in Colonel Livingston's regiment; that he served in that capacity at the taking of Chambly, St. John's and Montreal, and at the siege of Quebec; that on the day of the attack, in consequence of intoxication of his captain, and the absence of two other captains, he was appointed to command three companies by command of General Montgomery, who, at the same time, presented him with a sword and gun as a mark of respect for his services; that he, under Colonel Livingston, commenced the attack at the gates of the St. John's suburbs, and that he, with his own hand, set fire to the gates; that after the siege was raised he retreated with the army to St. John's, where he received a furlough to return home to visit his father, who lay sick, and had sent for him, and on his return home was taken prisoner by the English, and tried for assisting the Americans. He was, however, acquitted, in consequence of their not being able to get witnesses, who had retreated into the United States. That he exerted himself to escape to the States and join his company again, but was prevented by spies appointed to

watch his movements. That after he was tried, he was let out on parole not to leave the parish of St. Dennis ; and at the time he received his furlough he also received a certificate from Colonel Livingston of the amount of wages due him ; and that he never received anything for his services, except ten dollars ; that his commission, &c., was delivered to one Benway to get pay for his services and losses, and he was drowned and his papers lost. The truth of his declaration was supported by the testimony of a witness who enlisted as a private in the same company, and served under the orders and command of said Lieutenant Mignault from the time he joined the American army, at St. John's, until he was taken prisoner—corroborating the said Lieutenant Mignault in all the particulars of his services, and imprisonment, and parole to the limit of the parish of St. Dennis during the war.

There being no record evidence of the services, the department called for further corroborating evidence ; and it appears, while evidence was collecting, in compliance with the requisition, and some had been obtained, he died, to wit, on the 20th day of June, 1832. The evidence the old man was collecting, in order to renew his claim, is now offered in connexion with the papers and testimony on file in the Pension Office, a duly certified copy of which has been furnished your committee from the Commissioner of Pensions. This additional evidence is corroborative of the main statements before given, and, in the opinion of your committee, there is evidence sufficient to entitle the children of the officer to all the benefits which were intended to be conferred on the officer by the act of May, 15, 1828, and they recommend a bill accordingly.

NIAGARA SHIP CANAL.

[To accompany Bill H. R. No. 432.]

MAY 11, 1858.—Ordered to be printed.

Proposed to be reported by Mr. BURROUGHS.

The undersigned, majority of the committee to whom were referred numerous memorials and resolutions, asking for a grant of lands to aid in the construction of a ship canal around the falls of Niagara, report :

That among the papers asking for such grant are joint resolutions adopted by the legislatures of several States, namely : New York, Ohio, Michigan, Indiana, Illinois, and Wisconsin ; and also resolutions adopted by the boards of trade of several important cities, namely : Chicago, Detroit, Milwaukee, Racine, and twenty-five petitions, numerously signed, coming from all the important commercial towns of the northern States ; most of the petitioners are connected with commerce, and well understand the wants of the country. Within a quarter of a century these pioneers of commerce have given birth to cities and towns in the great valley of the north, which make the "wildest tales of magic appear credible."

Their opinions have the value which genius and enterprise give to personal experience and demonstration, and are entitled to the highest consideration.

"The attention of the general government was called to the subject as early as the year 1835, and during that year a survey was made around the Niagara Falls, with the view to the construction of a canal, under the direction of Captain W. G. Williams, of the United States topographical engineers, by the order of the general government. The report of Captain Williams is a very able one, and reflects great credit upon him, not only as a scientific engineer, but as a man of wide and expansive views and far-reaching foresight and sagacity. Limited as was the commerce of the great lakes then, and imperfectly as the natural resources of the lake country had then been developed, he clearly foresaw the great importance of such a canal, not only to the States immediately adjacent to these inland seas, but to the whole Union, and urged with great earnestness and emphasis the construction of such a work in aid of the 'national commerce.' As was natural, the canal then proposed was much less in capacity than the present one ; and, like the Welland canal, of our Canadian neighbors, would have been entirely inadequate to the already wonderfully increased and ever increasing commerce of the west."

It cannot be doubted that this great national work will, at no distant day, under the patronage of government, be completed ; perhaps it is not to be regretted that it has been delayed until the present time.

If the construction had been entered upon in 1836, upon the plan proposed by Captain Williams, the wants of commerce would have demanded its reconstruction and enlargement at a very early period.

As the relations of commerce assume settled forms, everything pertaining to it is made to conform to the severest calculations of economy. This fact could hardly receive a simpler or more truthful illustration than by reference to the carrying trade of the great central valley of New York, through which the commerce of the west has mainly been conducted for a period of seventy years. Before the year 1796 it cost to transport by wagons from Schenectady to Seneca falls, a distance of 212 miles, \$100 per ton. During that year the "Western Navigation Company" got their locks into operation, and boats carrying "sixteen tons" were enabled to pass from Schenectady to Seneca falls. This achievement of what was then thought a great enterprise, reduced the price to \$33 per ton on up freight, and half that sum on down freight, the difference in cost being chargeable to the current in the rivers; the propelling power then in use was *primitive poles and oars* in the dexterous hands of hardy *voyageurs*.

The completion of the Erie canal, connecting the waters of Lake Erie with the Hudson river, in 1825, inaugurated a new era to western transportation and northern commerce.

The average capacity of boats first used on the Erie canal was 35 tons, and the cost of transportation on "up freight," between Albany and Buffalo, (a distance of 362 miles,) was, in 1826, \$25 per ton.

The construction of boats adapted to this then new method of transportation was at that period but little understood; and improvements in structure (without any increase in the capacity of the canal) caused a reduction of 20 per cent. in the cost of transportation within fifteen years; and at the present time the price per ton is reduced to less than five dollars. During the last fifteen years improvements in lake navigation and railroad transit, with its lightning speed, have wrought great and important changes in the western carrying trade through the great northern valley; and the Chicago merchant now sits at his counter, calculating by careful *decimals* the difference in cost per ton by the different routes of transportation between his city and the great American metropolis. It would hardly be credible, did not figures demonstrate the fact, that a saving of *ten cents* per ton on freight passing to and from the west through this gateway, would amount to six hundred and eighty-one thousand dollars per annum, taking the tonnage of 1856 for computation.

The carrying trade is the right arm of all agricultural industry, of commerce, and of civilization.

It gives birth to the surplus productions of industry by opening a market; it increases the producer's wealth by cheapening the price of transit; and upon this increase of wealth, and this alone, in this country, and in every part of the globe, in our time and during all past ages, has depended the civilization of the world's inhabitants.

Our Constitution has wisely conferred upon Congress the power "to regulate commerce with foreign nations and among the several States." In the exercise of this power careful and just discrimination should be made between subjects of a character purely national or purely

private. And great consideration and support is due to every enterprise affecting broad districts of country and millions of people. *Great and widespread aggregate benefits give to any enterprise a national character*; and although such enterprise should partake in great degree of a private nature, it is clearly the duty of government to lend its aid to every such enterprise to the extent of its utility and necessity, so far as an application of its means can be made with just and equitable regard to every other district and part of the republic.

Acting under well-settled constitutional authority and upon patriotic views of duty, having regard to the "general welfare," the government have, by authority of Congress, constructed harbors and light-houses, and improved navigable rivers, during the whole period of its national existence; and, in the spirit of enlightened patriotism, have contributed large tracts of the public domain to aid in the construction of railroads and the support of educational institutions in several States. A liberal grant of land was made in 1854 to aid a private corporation, created by the government of Michigan, in constructing a canal around the falls of St. Mary, in the State of Michigan. And although this great national work cost the government 750,000 acres of valuable lands, the achievement is believed to have the approval of the nation. Opening a navigable communication for vessels of 1,000 tons burden between the *copper and iron mountains of Lake Superior* and the *coal fields of Ohio and Pennsylvania*, will ever be regarded as honorable to the patriotism of the men who gave life to the enterprise by contributing a part of the public domain.

The Mediterranean ocean and the Black sea receive the waters of about two millions of square miles of land, (which deducting mountainous regions not available to cultivation,) contrasted with the great northern basin of the American continent, in which lies a chain of lakes and rivers, receiving the waters of one million two hundred thousand square miles of land, will be found to have resources scarcely greater for sustaining human life than our own "Mediterranean" valley.

The following table presents these:

Northern lakes and connecting rivers.

	Length.	Breadth.	Coast, Am.	Coast, Brit.	Total.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
River St. Lawrence	600	-----	150	1,200	1,350
Lake Ontario	200	60	250	300	550
Niag-ra river	37	-----	60	40	100
Lake Erie	300	70	350	300	650
Lake St. Clair and river	55	25	40	70	110
Huron river	50	-----	50	50	100
Lake Huron	350	100	500	300	800
Mackinaw straits	50	10	200	-----	200
Lake Michigan	300	90	800	-----	800
St. Mary's river	70	-----	120	80	200
Lake Superior	450	200	800	400	1,200
St. Louis river	18	-----	36	-----	36
	2,480	555	3,356	2,740	6,096

Showing an aggregate of accessible coast of 6,096 miles in extent, to which should be added Georgian and other bays not set down, making more than 7,000 miles.

In the States of Illinois, Indiana, Michigan, and Wisconsin there are under cultivation 13,060,697 acres, which produced, in 1850, 165,455,061 bushels of wheat, rye, corn, and oats.

There are in these four States alone 101,575,102 acres of uncultivated lands.

It will be esteemed fair to presume that eighty millions of acres of these uncultivated lands are susceptible of profitable culture. The produce of these eighty millions, estimated upon the returns now realized from a very imperfect system of husbandry, would be, of these grains alone, 1,013,453,177 bushels.

The following statement, compiled from the census of 1850, presents the produce of eight States, and though embracing some regions which do not contribute to the trade of the northern valley, other territories, not embraced in the computation, lying further west, and within the limits of the United States, would more than compensate for the unimportant districts included. And it will, moreover, be noticed that we have not included any part of the British possessions.

These eight States produced in 1850—of wheat, rye, corn, and oats—

	Wheat.	Rye.	Corn.	Oats.	Total.
Illinois	9,414,575	83,364	57,646,984	10,087,241	77,232,164
Indiana	6,214,458	78,792	52,964,363	5,655,014	64,912,627
Ohio	14,847,351	425,918	59,078,695	13,472,742	87,464,706
Michigan	4,935,888	105,871	5,641,420	2,806,056	13,339,235
Wisconsin	4,286,131	81,253	1,988,979	3,414,672	9,771,035
Iowa	1,530,587	19,916	8,656,799	1,524,345	11,731,647
Minnesota	1,401	125	16,725	30,582	48,833
Pennsylvania	15,367,691	4,805,160	19,835,214	21,538,156	61,546,221
	56,228,082	5,600,399	206,829,179	58,588,808	326,246,468

The following table exhibits the improved and uncultivated lands in these States:

	Lands, total.	Improved.	Unsold.
	<i>Acres.</i>	<i>Acres.</i>	<i>Acres.</i>
Illinois	35,561,760	5,039,545	23,524,348
Indiana	21,597,760	5,046,543	8,804,338
Ohio	25,576,960	9,851,493	7,879,467
Michigan	35,995,520	1,929,110	31,611,630
Wisconsin	34,511,360	1,045,499	31,634,702
Iowa	32,584,960	824,682	29,848,896
Pennsylvania	30,080,000	8,628,619	15,156,653
Minnesota	90,776,960	-----	90,776,960
	306,685,280	32,365,491	238,836,994

It will be seen that the 32,365,491 acres of improved land produced, in 1850, 326,000,000 of bushels of wheat rye, corn, and oats.

Deduct from the 306,000,000 of acres, embraced within the limits of these States, 106,000,000 for reserved forests and unavailable lands, and the remaining 200,000,000 will produce, annually, of these grains alone, calculating upon the returns now received, more than two and a half billions of bushels.

It would not be difficult to show that improvements in agriculture, now making rapid and sure advances, will, within a quarter of a century, add fifty per cent. to the aggregate produce of the soil; and the period is not distant when these vast regions will reward the labors of husbandmen by a return of three billions of bushels of cereal grains, besides pasturage for animals, amounting in value to more than \$900,000,000.

Resorting to the most accurate available data to determine the aggregate of the carrying trade through this valley, we are obliged to acknowledge that proximate results only can be reached; but, so far as calculations are made, it will be found, upon critical inspection, that we have in no instance overrated.

The following table will show the tonnage of the Erie canal for a series of years:

NIAGARA SHIP CANAL.

The tons of the total movement of articles on all the canals from 1836 to 1856, is as follows:

Year.	Products of the forest.	Agriculture.	Manufactures.	Merchandise.	Other articles.	Total.
1836	755,252	225,747	88,810	127,895	113,103	1,310,807
1837	618,741	208,043	81,755	94,777	168,000	1,171,296
1838	665,089	255,227	101,526	124,290	186,879	1,333,011
1839	667,581	266,052	111,968	132,286	257,826	1,435,713
1840, Gen. Val. canal opened.	587,647	393,780	100,867	112,931	223,231	1,417,046
1841	645,648	391,905	127,896	141,054	215,258	1,521,661
1842	504,597	401,276	98,968	101,446	130,644	1,236,931
1843	687,184	455,797	124,277	119,209	136,972	1,513,439
1844	864,373	509,387	144,245	141,230	156,651	1,816,586
1845	881,774	555,160	160,638	161,450	228,543	2,977,565
1846	916,976	814,258	149,006	189,799	218,623	2,268,682
1847	1,087,714	1,092,946	176,448	224,390	287,812	2,869,810
1848	1,086,880	913,824	202,781	261,458	331,287	2,796,230
1849	1,104,940	1,020,259	203,990	255,455	310,088	2,894,732
1850	1,261,991	965,619	200,218	269,370	379,419	3,076,617
1851	1,393,698	1,125,264	232,529	365,404	475,838	3,582,733
1852	1,586,080	1,213,367	207,955	420,295	435,754	3,865,441
1853	1,821,525	1,160,923	230,956	458,327	537,041	4,247,852
1854	1,768,745	992,839	268,021	406,022	740,235	4,165,862
1855	1,534,934	1,047,344	281,873	374,402	784,064	4,022,617
1856	1,478,674	1,192,673	284,901	370,758	789,076	4,116,082
Total for 21 years	21,919,943	15,191,680	3,558,188	4,822,538	7,146,344	52,639,693

NIAGARA SHIP CANAL.

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We add here the tonnage of the canals and railroads of the State of New York for a term of four years, with a classification of freight:

Description of freight.	Total New York, Central, and Erie railroads.		New York State canals.		Total New York, Central, and Erie railroads.		New York State canals.	
	1853.	1854.	1853.	1854.	1855.	1856.	1855.	1856.
	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.
Products of the forest	124,087	181,287	1,921,525	1,768,745	156,405	145,925	1,534,934	1,478,674
Products of animals	99,755	251,917	70,612	78,684	236,819	331,905	48,691	33,826
Vegetable food	80,868	255,497	1,071,300	903,735	360,697	431,969	993,175	1,163,894
Other agricultural products	9,849	23,171	9,012	10,420	17,862	33,623	5,478	4,953
Manufactures	112,281	162,687	230,036	258,021	156,634	183,500	281,873	284,901
Merchandise	68,742	173,658	458,327	406,022	211,820	282,704	374,402	370,758
Other articles	135,457	244,838	587,041	740,235	321,884	309,711	784,064	789,076
Total tons on New York Central	360,000							
	991,039	1,293,055	4,247,853	4,165,862	1,512,121	1,719,327	4,032,617	4,116,082

Also, the tonnage of the Welland canal for the years 1853 and 1856, distinguishing also American and Canadian vessels.



Welland Canal.

In 1856, 6,790 vessels passed through this canal. American, 2,835; tons, 726,591. Canadian, 3,931; tons, 452,655. Nearly two-thirds of the whole tonnage is American.

In 1856, 2,155,802 tons of vessels and property both ways; in 1853, 1,969,142 tons of vessels and property both ways—186,660 tons increase in three years.

In 1856, 976,556 tons of property both ways; in 1853, 905,518 tons of property both ways—71,038 tons increase in three years.

During the year 1856 the commerce of this valley presents the following items:

	Tons.
By the Erie canal.....	4,116,082
By New York railroads.....	1,719,327
By Welland canal.....	976,556
Total.....	<u>6,811,965</u>

Let it be assumed for the purpose of approximating future trade based upon the capacity for increased agricultural productions *alone*, and thirty-two millions of acres of improved lands, yielding a tonnage of seven millions, (in round numbers,) will give, as the result of two hundred millions of acres, when improved, forty-three millions of tons. To this immense aggregate must be added the tonnage to flow from the great mineral regions of Lake Superior; and it must be admitted that no calculations based upon the ordinary mining operations of the world could conduct us to safe or probable conclusions.

What increase in the use of iron and copper will be demanded during the next half century, no mind can compute. Our sea-going vessels are now built of iron. The commerce of the world, it is believed, will soon employ almost exclusively vessels of iron. The railway and the iron horse within a half century will penetrate every part of the habitable globe; and, as if Providence, with *hand almost seen guiding the car of modern civilization*, would leave no means of success unprovided, on the shores of the greatest lake of the world has piled up, mountain high, the best iron ore to be found upon the globe.

We have not to penetrate the bowels of the earth for this indispensable metal, but only to *break down* the mountain cliffs almost in sight of our sea-going ships, and roll these mountains of wealth on board our vessels, and, through a ship canal around the Falls of Niagara, float a thousand tons to any seaport of the world.

To compute this item of commerce, is to estimate the wants of the world for all coming time. The supply is inexhaustible.

To command western commerce, the State of New York alone has expended upon her canals forty millions of dollars, and railroad companies one hundred millions.

The British government have expended upon their canals in this valley over thirty millions of dollars.

The Welland Canal, connecting the waters of Lakes Erie and Ontario, was constructed by the British government; it is twenty-nine miles long, having thirty locks of ten feet lift each, and cost ten millions of dollars; is ten feet in depth, with a surface of seventy-one feet, and fifty feet width at bottom; the locks are 150 feet in length and 26½ feet in width; sail vessels of 300 tons and propellers of 450 tons are passed through this canal, when not crowded, in two days, but often occupying four or five days.

The St. Mary's canal has capacity to pass a vessel of a thousand tons burden; the locks are 350 feet long, seventy-five feet wide, and the depth of water upon the mitre-sill is twelve feet.

Several routes have been surveyed and careful estimates made, at different periods, by competent engineers, and from their estimates and reports some extracts are submitted, showing the practicability and cost of the contemplated canal.

The following extracts are from the report of Charles B. Stewart and Edward W. Serrell, made in 1854 to the commissioners appointed by the State of New York, relating to the said proposed canal:

"For this project, various plans have been proposed and surveys made at different periods during the past half century. The principal examination hitherto made is that of the late Major Williams, United States topographical engineer, in 1835-'36, of which an able report was submitted to Congress, demonstrating the feasibility of the route, with estimates based upon the capacity of vessels then in use. The commerce of this region, having expanded far beyond the anticipation of that day, requires much larger provision for its accommodation; and new examinations, on a more extensive basis, have been necessary, in which attention has been directed to the character of the harbors of the several lakes, and the effect of their *depth* on the size of vessels now and hereafter to be built; and the details of the plans proposed have been arranged in view of the large increase of business, in connexion with this natural and unavoidable restriction.

"Topography of Niagara county.

"The Niagara river separates New York from Canada West, and is the outlet of Lake Erie, flowing northerly to Lake Ontario, a distance of thirty-two miles. From Buffalo to Fort Schlosser, a distance of eighteen miles, it is navigable for the largest class of lake vessels, the velocity of its current being slight, except for a short distance at Black Rock. From a point about a mile below Schlosser, the river falls rapidly to the edge of the cataract, the vertical descent of which is one hundred and sixty feet. From the foot of the great falls, it descends, in a series of rapids and whirlpools, a distance of six miles, to the village of Lewiston, and thence to Ontario its channel is deep and navigable. From Buffalo to the falls the banks of the river are generally low, rising but a few feet above its surface. From the falls to the ridge above Lewiston the ground rises gradually to an elevation, at the ridge, of about seventy feet above the river at Schlosser, being nearly four hundred feet above the level of Lake Ontario. The descent from the ridge is abrupt to the level of Lewiston village, which is about

one hundred feet above the river, and gradually slopes from this elevation to the lake shore.

"The shores of Lake Ontario are generally from fifteen to twenty-five feet high, except when intersected by small ravines. It will thus be seen that Niagara county is marked by two important levels—that of Niagara river over the falls, and that of Lake Ontario.

"The Lewiston ridge forms the dividing line to these levels, its course being easterly until it is merged in the general surface of the country at Rochester, seventy-five miles distant. Its descent towards the lake is at first abrupt, falling about two hundred and seventy feet; the remaining descent being accomplished by four successive plateaus, of different widths, in which a few small streams take rise, discharging in the lake. These are named in accordance with their respective distances from the river—as 'Four-mile creek,' 'Six-mile creek,' 'Twelve-mile creek,' &c., &c.

"The upper level is also intersected by several streams, of which the most important is the Tonawanda creek. Cayuga creek, entering the river under the lee of Grand island, about six miles above the falls, with Gill creek, entering at Porter's Storehouse, under the lee of Schlosser island, about two miles above the falls, are the only remaining water-courses, except the Bloody Run, which falls into the Niagara river gorge, below the village of Bellevue.

"In addition to the natural difficulties thus presented in the topography of this region, several artificial constructions, made since the report of Major Williams, increase the cost of this undertaking. The number of public and private roads is greater, in consequence of the improvement of the country. A hydraulic canal is being made at the village of Niagara Falls; and there are now centring at the suspension bridge, Bellevue, on the American side, *five* railroads, viz: The New York Central railroad, the Canandaigua and Niagara Falls, the Buffalo and Niagara Falls, the Niagara Falls and Lake Ontario, and the Lewiston railroad.

"From the accompanying maps and descriptions, given hereafter, of the several surveys made, it will be seen that not less than *three* of these roads must be crossed by any line which can be located.

"In directing our attention to these surveys, an effort has been made to avoid all sectional or local prejudices, and to propose such lines only as have merit in themselves, irrespective of any other considerations.

" Lines examined.

"In the report of Major Williams the following lines are noticed :

"1st. A line beginning at Porter's Storehouse, near old Fort Schlosser, passing by Fort Grey, descending the ridge at that point, and debouching at Lewiston.

"2d. A line beginning as above, passing through the village of Niagara Falls, (on the present line of the hydraulic canal,) and intersecting the preceding line.

"3d. A line up the valley of Gill creek, descending the ridge through

a depression at the head of Fish creek, and terminating on Lake Ontario, at the mouth of Four-mile creek.

"4th. A line ascending the Cayuga creek, crossing the Lewiston ridge, near Pekin, and debouching at the mouth of Twelve-mile creek.

"5th. A line on the Tonawanda creek, to Pendleton village, thence entering the Eighteen-mile creek north of Lockport, and following the same to its mouth."

The several surveys demonstrate the feasibility of the work, and, adopting the size of St. Mary's canal and locks, the estimated cost by the most favorable locations would not be less than twelve or sixteen millions of dollars.

In determining the size and location of the work, taking into consideration the interest of the government in it as a military highway, as provided in the bill reported, it is proposed that government shall create, for the determination of all questions relating thereto, such commissioners and engineers as may be appointed by the President of the United States.

The bill further provides that the vessels-of-war, munitions, stores, troops, and other property of the United States, shall at all times pass and repass said canal forever free of all charges whatever; and in cases of war or rebellion, the government of the United States shall have preference over all others.

"When this canal was first projected, Buffalo was but a mere village; Chicago was an Indian trading post, without importance, and almost without hope; and most of the numerous and important towns upon the Lake Michigan had no existence even in name."

"When the famous undertaking of constructing the Welland canal, in 1818," remarks a celebrated Canadian engineer, "was commenced by a few inhabitants of the Niagara district, who levelled the ridge which divides the waters emptying into the St. Lawrence above and below the FALLS OF NIAGARA, there were present no high official personages, no celebrated engineers, distinguished commercial or political leaders. All but one were inhabitants of the township of Thorold—farmers and country traders. They had before them no successful precedent. A people four times as numerous, and commanding the trade of that Atlantic which scarce one of these Canadian schemers had ever seen, were just commencing the Erie canal. There was then but one steamer upon Lake Erie. Huron and Michigan were known only to the Indian and the fur traders. Buffalo, a city of *fifty thousand* souls, was then a village, and Chicago and Milwaukee were yet 'in the womb of time.' The whole commerce above Niagara upon *sixty thousand square miles of water, with four thousand miles of coast, employed but forty sail, two only of which exceeded one hundred tons*. Yet, in that feeble and unostentatious commencement, we trace the origin of that policy which has since broken down the barriers interposed by nature between the commercial intercourse of Central North America and the world; and the unassuming actors have lived to see hundreds of floating palaces propelled by steam, and thousands of sailing vessels, ploughing 'the world of waters' in the west. They have seen the tonnage of 1818 increased a thousand-fold, the population around the lakes thrice doubled, and an emigration of gold-seekers

sailing in a lake-built brig two-thirds the circuit of the globe to colonize the old conquests of Spain."

Now, on the bosom of these inland seas, the produce of the great west is carried to the seaboard by vessels whose tonnage equals that of the whole foreign commerce of this country. Iowa, Illinois, Indiana, Michigan, western Ohio, Minnesota, and Canada West, are all dependent on these lakes for their commercial importance, as they form the only direct water communication from the central portion of the northwestern part of this continent to the Atlantic ocean.

The construction of the NIAGARA SHIP CANAL, would open wide the channel around the last formidable barrier between the west and the east; and by the facilities it would give to the transportation of objects of agricultural and manufacturing industry, it would awaken into life a thousand springs of latent resource, and develop the agricultural and mineral treasures of the country bordering the western lakes in a degree to render it worthy the patronage of the general government.

Concurring in the views of the petitioners, the undersigned herewith report a bill granting lands to aid in constructing said canal.

SILAS M. BURROUGHS.

JNO. F. POTTER.

P. BLISS.

G. PALMER.

W. L. DEWART.

H. L. DAWES.

MAY 10, 1858.

TERRITORY OF NEVADA.

[To accompany Bill H. R. No. 567.]

MAY 12, 1858.

Mr. WILLIAM SMITH, from the Committee on the Territories, made the following

REPORT.

The Committee on the Territories, to whom was referred the petition of numerous citizens of the United States residing in the Territory of Utah, asking for the creation of a new Territory, to be formed from the western portion thereof, have, according to order, had the same under consideration, and respectfully submit the following report:

On the 9th day of September, 1850, the Territory of Utah was created. Its limits, as defined by law, embrace the vast space lying between the Rocky mountains on the east, Oregon on the north, California on the west, and the 37th parallel of north latitude on the south. By the passage of said act, and the organization of a Territory in conformity thereto, the people already resident therein, as well as all those who might come after them, were promised protection and good government. Upon the faith of such implied promise they made their settlements, and have sought to establish, in defiance of numerous difficulties and dangers, the independent homes of the hardy and adventurous pioneers. They have succeeded to a great extent, and they claim from a paternal government the redemption of its plighted faith, and especially that protection which is the right of every American citizen.

In the organization and settlement of the Territory of Utah, it unfortunately happened that the power and authority thereof fell into the hands of the Mormons, a sect whose intolerance allows no participation by any one, other than of their own denomination, in their civil affairs. The principal settlements in Utah are about or near Salt Lake City, and are composed almost exclusively of a Mormon population. Within these settlements counties are organized, and all the machinery of government called for by the people abundantly supplied. Attracted by the boundless fertility of the Carson and contiguous valleys, the Mormons made a settlement therein, and the legislature of Utah passed a law creating the county of Carson, which was duly organized. Here, how-

ever, the Mormons encountered a resistance to their exclusive policy they did not anticipate. American settlers of other denominations were also attracted by the loveliness of those great valleys ; and many an emigrant on his way to California, induced by the advantages which tempted him, pitched his tent in the same wilderness. Jealousies, hatred, and ill-will soon sprung up between the Mormon and the Gentile. The Mormons resorted to annoyances of a varied character, then threats, and finally organizations of a warlike character, with a view to drive off the anti-Mormon population. In this, however, they entirely failed. For this reason, no doubt, in part, and because of the increasing difficulties between the federal government and the Mormons, they determined to sell out their settlements and return to Salt Lake. About the same time the law creating the county of Carson was repealed, and the whole of western Utah was left without government.

It is under such circumstances, briefly stated, that the petitioners of western Utah have presented their memorial to the Congress of the United States. It is under such circumstances that they have also memorialized the President. It is under such circumstances that the governor of the neighboring State of California, in his annual message of January last, urges upon the legislature of his State some action favoring the establishment of the Territory asked for by the petitioners. He says : "The rapidly increasing settlements of the Territory immediately adjacent to our eastern border by a population of worthy and enterprising people, manifesting a due observance and obedience to the institutions and laws of their country, requires, for the protection of their persons and property, a territorial organization. Even prior to the departure from their midst of the Mormons, and before their leaders had assumed an attitude of hostility towards the general government, from the peculiarity of Mormon customs and the decided partiality and favoritism exercised by them in the administration of justice, but feeble aid and protection were afforded to those who denied the verity of their peculiar creed. And now, when among this deluded people rebellion and treason are made manifest, even the semblance of governmental aid is denied to the residents of Carson and the adjoining valleys. The situation of that country, through which necessarily passes a large proportion of the overland immigration to this State, with the probability of a rapid increase of citizens within its limits, whose interests must in a great measure be inseparable from our own, constitutes it an additional link in the chain of connexion which unites us with the existing States and Territories of the Union, and makes it an important auxiliary in the advancement of our State in population, wealth, and political influence." It is under such circumstances that the legislature of California, in February last, adopted the following concurrent resolution, which was presented to this House on the 4th of March last :

"Resolved by the assembly, the senate concurring herein, That, in view of the impending difficulties in Utah, and fully impressed with the importance of a speedy organization of a territorial government in Carson valley, our senators in Congress are hereby instructed, and our representatives earnestly requested, to procure the passage of an

act securing the establishment of said territorial government, with such boundaries as circumstances may warrant and require."

All asking that a territorial government may be formed out of western Utah. And the question is, Shall the petitioners be denied the government they were promised, and of which they have been deprived without any fault of theirs?

Your committee will ask attention to the following paragraphs extracted from the petition of said people: They say that "a large portion of the inhabitants who make this appeal to the powers that be in Washington have been residing within the region hereinafter described for the last six or seven years, without any territorial, State, or federal protection from Indian depredations and marauding outlaws, runaway criminals and convicts, as well as other evil-doers among white men and Indians." * * * *

That "we are peaceable inhabitants and law-abiding citizens, and we do not wish to see anarchy, violence, bloodshed, and crime of every hue and grade, waving their horrid sceptre over this portion of our common country." * * * That "no debts can be collected by law; no offenders can be arrested, and no crime can be punished, except by the code of Judge Lynch."

It cannot be doubted that many of your petitioners were tempted into these deep glens and lovely wilds by the assurance that the power of our great republic would be exerted for their protection. It was not believed that some two hundred valleys, many of vast extent, and all of exhaustless fertility, although surrounded in the distance with lofty sierras covered with eternal snows, yet clothed with a carpet of evergreen, would be left in unbroken wilderness, its deep repose broken only by the cry of the wild beast and the yell of the roaming savage. And hence our American population have never ceased to increase in numbers, until now, from the best information your committee have been able to obtain, it amounts to from seven to ten thousand souls. Some diversity of opinion may exist as to this fact; but the population is sufficiently stable and numerous to have been considered entitled to the benefit of our post office system, which has been introduced among them by law, and is now in full and regular operation.

Independent, however, of such considerations, your committee consider others exist of a highly important public character, which they respectfully submit to the House.

For years, as it is generally understood and believed, the governor of Utah, as superintendent of Indian affairs, has exerted a baneful influence over the Indians within his jurisdiction, seriously prejudicial to the interests of the United States, but yet in strict conformity with the exclusive policy of that remarkable people. One of the great overland routes to the Pacific ocean passes through Utah a distance of upwards of eight hundred miles, following the valley of the Humboldt for about three hundred and fifty miles. This valley is surrounded by savage tribes. It embraces at or near its source the great passway of the fierce and warlike Indians of Oregon and Washington in their frequent forays upon Mexico. Set on, no doubt, by Mormon instigation, the Indians have frequently fallen upon the wayworn

emigrant, and thousands in this great valley have found an untimely grave. It is here, as we are told, the Mormon cry has been often heard encouraging the savage to his work of death. And the hardy emigrant, by the graves which line his waypath, is told, in mute yet eloquent admonition, of the dangers which beset him, and the fate of many of those who have preceded him. And this is the state of things in an organized Territory of our Union, and fostered, too, into existence and frightful development by those placed in authority by the federal government. Duty and humanity cry out against this deplorable state of things, and demand, in trumpet tones, of those having power to apply it, a remedy for these atrocious wrongs.

But, again, the United States mail passes for about eight hundred miles through Utah, environed by danger, and although in an organized Territory, is yet without protection of law. The army of the United States has recently been ordered into Utah, to enforce the civil authority, but how it can be done it is difficult to perceive, with no population but that of the Mormon faith. Bound, as is well known, to obey no authority but that of their church—controlled by the despotic will of one man, who allows no hesitation in the execution of his commands, and punishes recusancy, as is represented, by the hand of the assassin, the Mormon is taught as his most imperative duty to repel, cast off, and nullify Gentile authority; and it is manifest that no regular administration of the civil affairs of Utah under her organic act can ever take place, and that some great and fundamental change is indispensable therein.

It is also represented that much secret dissatisfaction exists in the Mormon settlements and church, which is repressed from dread of punishment and the impossibility of escape, from the difficulty of reaching other jurisdictions. It is believed that if a new Territory were formed, extending within convenient distance of Salt Lake City, that the dissatisfied Mormons would cheerfully escape from a dominion which they despise; and thus this dangerous and growing tribe would be repressed, with but little expense or loss of life, with far more certainty and effect than by "an army with banners."

Some think that the most effective way of ending our Mormon difficulties would be by repealing the act organizing the Territory of Utah, and subjecting the Mormon population thereof to our Indian policy. The proposed Territory would greatly facilitate such a measure, and would thus be enabled to go into operation without adding to the charges upon the treasury.

It is proposed that the new Territory shall be bounded on the west by California, commencing at a point where it leaves the Colorado; thence northerly, with said line, to its point of intersection with the Oregon line; thence, with said line, on the latitude of 42 degrees north, east to the 114th degree of longitude west; thence, with said longitude, to the Goose Creek mountains; thence southerly, with said range, to the headwaters of Lake Nicollet; thence, down the stream formed by said waters, to said lake, and through the same to the nearest range of mountains running southerly, until it shall reach Cedar City, at or near the 114th degree of west longitude; thence, with the most conspicuous landmarks, to the headwaters of Virgin river; thence down said stream to its in-

tersection with the Rio Colorado ; thence down said river to the beginning. These boundaries embrace upwards of 130,000 square miles; from 7,000 to 10,000 American citizens ; more than 100,000 Indians ; two hundred great and fertile valleys ; foot hills covered with primeval forests ; magnificent lakes, one at least, high up in her towering mountains, sixty miles long by twenty wide and fifteen hundred feet deep ; burning and health-restoring springs of great variety ; while the hug mountains teem with the richest minerals.

Your committee believe that the citizens within said Territory have the right to expect of the federal government what they ask. They also believe that grave public considerations demand it. They are satisfied that the establishment of a territorial government would tend to protect the public mails travelling within and through it ; make safe and secure the great overland route to the Pacific as far as within its limits ; restore friendly relations with the present hostile Indian tribes ; contribute to the suppression of the Mormon power by the protection it might afford to its dissatisfied members ; and, in the present exigency in that region, might be, and almost certainly would be, of material aid to our military operations. Thus satisfied and impressed, your committee respectfully report a bill for the formation of a new Territory, according to the boundaries before recited, to be called the Territory of Nevada.

LAND DISTRICTS IN WASHINGTON TERRITORY.

[To accompany Bill H. R. No. 177.]

MAY 12, 1858.

Mr. CORB, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred House Bill No. 177, to establish three additional land districts in Washington Territory, have had the same under consideration, and have agreed to report a substitute for the bill and recommend its passage.

The necessity of having land districts established in all countries opening up for survey and settlement is so apparent to all who may choose to think for a moment, it will supersede the necessity of the committee arguing the case, further than to state, in their opinion, two additional land districts (which the substitute proposes to establish) will answer all the purposes necessary for the present.

KANSAS CONSTITUTION.

MAY 11, 1858.—Ordered to be printed.

MR. ALEXANDER H. STEPHENS, of Georgia, from the Select Committee,
made the following

REPORT.

The select committee of fifteen appointed under the resolution of the House of the 8th of February, to whom was referred the message of the President of the United States of the 2d of February, "concerning the constitution framed at Lecompton, in the Territory of Kansas, by a convention of delegates thereof, and the papers accompanying the same," with instructions "to inquire into all the facts connected with the formation of said constitution, and the laws under which the same originated; and into all such facts and proceedings as have transpired since the formation of said constitution having relation to the question or propriety of the admission of said Territory into the Union under said constitution; and whether the same is acceptable and satisfactory to the majority of legal voters of Kansas," have had all the matters committed to them under consideration, and now present the following report:

The leading object of the resolution under which the committee was raised seems to have been the ascertainment of all the essential facts bearing upon the question or propriety of the admission of Kansas as a State under the Lecompton constitution, in accordance with the recommendation of the President. This object has been the controlling principle of the committee's action in their investigation. The scope of their duties embraced an inquiry into all facts relating to the legality and regularity of the proceedings resulting in the formation of that constitution, both antecedent and subsequent thereto, showing whether or not it be the embodiment of the legally and fairly expressed will of the *bona fide* citizens of Kansas. With this understanding of the field of labor before them, the committee directed their attention—

1st. To a law passed by the territorial legislature providing for taking the sense of the people at the October election in 1856, upon the expediency of calling a convention to form a State constitution.

2d. The law of the Territory passed the 19th of February, 1857, in

pursuance of the popular will expressed under the previous act, providing for an election to be held on the 15th June, 1857, of delegates to such a convention.

3d. The official registry of voters, and the apportionment made by the acting governor (Stanton) of delegates to the convention so called in accordance with the provisions of said act.

4th. The assembling of the convention at Lecompton on the first Monday of September, 1857, under the act last aforesaid, and the journal of their proceedings.

5th. The constitution formed by the convention so assembled, alluded to in the message of the President.

6th. The action of the people on the questions submitted to them by one of the clauses of the schedule in the constitution.

These laws, facts, and proceedings constitute, in the judgment of the committee, all matters having any material bearing upon the main questions embraced in the recommendation of the President, and covered by the resolution of the House. But they permitted to be filed, and report to the House without deeming them relevant or material.

7th. The act of the territorial legislature of Kansas, at its called session in December last, providing for a vote to be taken on the 4th of January, just passed for and against said constitution.

8th. The official announcement of said vote.

And, also, as cumulative, though not material—

9th. The letter of Mr. Calhoun, president of the Lecompton convention, to the chairman of the Committee on Territories in the Senate.

All these papers are appended in full to this report, (except a part of the journal which has not yet been received, but which is expected in time to be presented with the rest,) and marked as exhibits in regular order. The committee deem it unnecessary to go into an elaborate exposition of them by detail. A general reference to some of the material parts, for the purpose of illustrating the conclusions to be drawn from them, will be quite sufficient. Those which they deem material are all documentary, about which there can be no dispute. They show a full and complete history of the proceedings resulting in the formation of the Lecompton constitution from their beginning to their end: First, the law for taking the sense of the people upon the propriety of applying for admission. Next, the law authorizing the call, in pursuance of the popular will. Next, the registry of voters, and apportionment of delegates. Next, the assembling of the convention, with their proceedings. Then, the constitution so formed; and, lastly, the ratification of it in the mode and manner provided by the convention. The legality and regularity of the whole are marked throughout. Every step in its progress was taken in strict conformity to law. But little appears on the face of the record even for comment. The question for the consideration of the House is, ought Kansas to be admitted as a State under the constitution so presented?

By the Constitution of the United States "new States may be admitted by Congress into this Union," and by the same instrument it is provided that "the United States shall guarantee to every State in this Union a republican form of government." Under the first of

these clauses eighteen new States have been admitted since the Union was formed; and two, besides Kansas, are now applying for admission. The usual questions of inquiry upon the applications of new States have been—

1st. In relation to the number of the population.

2d. The regularity of the proceedings under which the application has been made.

3d. Whether the constitution presented be republican in form.

In this case the attention of the committee has not been directed to the question of population. That point seems to be conceded on all sides. Upon the point of legality and regularity no question can arise. No State ever before applying exhibited greater regularity in her proceedings. On this point there can be no doubt. The only other one, as to the republican form of the constitution—that, too, seems to be equally clear, and beyond cavil or dispute.

What, then, are the objections to the recognition of the constitution, and the admission of the State under it? These, it is true, arise mostly on matters outside of the record. But the committee propose briefly to notice them in connexion with some seemingly founded on the face of the record itself.

The first of the latter class is that urged by Governor Walker. The main ground of his opposition is the fact that the entire constitution has not been submitted for ratification to a popular vote. This objection rests upon the assumption that the validity of every constitution formed for the government of any people depends upon its having received such a sanction. His argument, in his own words, rests upon the "principle that sovereignty is vested exclusively in the people of each State, and that it performs its first and highest function in forming a State government and State constitution. This highest act of sovereignty, in my judgment, can only be performed by the people themselves, and cannot be delegated to conventions or other intermediate bodies."

That sovereignty is vested exclusively in the people of each State, and that it performs its first but not highest function in forming a State government and State constitution may be granted. But that this first act of sovereignty in making a constitution can only be performed by the people themselves, and that the power to perform it cannot be delegated to conventions or intermediate bodies, is not granted. Such a doctrine is not only novel but utterly at war with all our past history. In support of it Gov. Walker cites no authority but his own. He announces it as the conviction of his individual judgment, and the only authority he refers to to sustain it is that of previous speeches made by himself, in which he had expressed the same opinion. But the position cannot be maintained, either on principle or any recognized authority. Reason is against it, and so is precedent. When it is admitted that sovereignty, "resides with the people," and that it is "inalienable," it does not follow that the right to exercise and execute sovereign powers cannot be delegated by them to others. If that were so, there could be no such thing as representative government. No law could be passed except by the people en masse. This would uproot and overturn all our system. It is the

very essence of sovereignty that it may act by itself or by any other it may choose to appoint. The enactment of all laws and the execution of them require the exercise of sovereign power as necessarily as the formation of a constitution. A constitution is but a law. It establishes the modes or channels through which the sovereignty of the people is to be exercised, not "*in propriis personis*," but by chosen representatives. The formation of such organic law cannot be said to be the highest act or function of sovereignty. There can be no *higher* act of sovereignty than the declaration of war; for this may put in jeopardy the existence of sovereignty itself; and yet in our representative system this is left, not to the people themselves, but to their representatives.

Hence, though it be true that the formation of a State constitution is the "first function of sovereignty," it does not follow that this may not be performed by representatives chosen and clothed with full power to act for the people in this matter, as well as in all others requiring the exercise of sovereign power.

Logically considered, there is no more reason why the people cannot make a constitution by others clothed with full power to do so than that they can in this way put not only their political, but their individual, existence in hazard upon the fortunes of war. The formation of a constitution requires, it is true, the exercise of sovereign power, and so does the commonest act of legislation. If the power to do one can be exercised by an agent or representative, so can the other; and such has been the uniform understanding in this country from the beginning of our history. The Constitution of the United States was not ratified by a popular vote. In all the States it was adopted by conventions chosen by the people and clothed with full powers to act for them. In its provision for its own amendment it does not contemplate any ratification by the people through a popular vote to give validity to any such amendment. Such amendments are to be acted upon by the State legislatures. In all the old States, with one exception, their first constitutions were formed and put into operation through the "intermediate body" of a convention. Massachusetts alone submitted hers to a popular vote. The constitution of the State of Pennsylvania, the native State of Governor Walker, that under which he was born and reared, and under which that great and prosperous Commonwealth has grown up and attained her present high eminence in wealth, power, and renown, derived all its sanction by the people through their representatives in convention. The same is true of Mississippi, his once adopted State, and the same is true of a majority of the States of this Union. If Governor Walker's judgment in this particular be right, then all these constitutions are necessarily invalid, null, and void; and we have neither constitutions nor laws in more than half of the States of the Union. This doctrine is as preposterous as it is monstrous. Its bare statement is enough to consign it to general repudiation and condemnation. The uniform course in our past history has been, when a new State applies for admission, to see that the sovereignty of the people has spoken through its legally constituted organs. The question of submitting their constitution to a popular vote or not is one for the people, and those whom

they clothe with power to determine this question, as well as others, for them. In the case of Kansas, in the first act appended to this report, Exhibit 1, it was provided to take the sense of the people upon the question of providing by law for the calling of a convention to form a constitution, and *by law* to define the powers or duties of the convention. This will be seen by the section (6) of the act. The vote was almost unanimous for the legislature so to call a convention and to define its duties. But few votes were cast against it. This, apart from the statement of Mr. Calhoun, appears from public documents accessible to all. The legislature did call a convention. They could have required them to submit their work to the people. This was a matter for their own discretion ; but this they did not do. This convention was elected with unlimited and plenary powers. That such a convention could be so clothed no one can doubt who is acquainted with the history of similar bodies. They, therefore, had full power, at their own discretion, to submit the whole constitution formed by them, or any part or no part of it, just as they pleased, for ratification. This the people well understood before the election of delegates. This Governor Walker virtually told them himself. In his inaugural address he says :

"The people of Kansas, then, are invited by the highest authority known to the constitution to participate freely and fairly in the election of delegates to frame a constitution and State government. The law has performed its entire appropriate function when it extends to the people the right of suffrage, but it cannot compel the performance of that duty. Throughout our whole Union, however, and wherever free government prevails, those who abstain from the exercise of the right of suffrage authorize those who do vote to act for them in that contingency, and the absentees are as much bound under the law and constitution, where there is no fraud or violence, by the act of the majority of those who do vote, as if all had participated in the election. Otherwise, as voting must be voluntary, self-government would be impracticable, and monarchy or despotism would remain as the only alternative.

"You should not console yourselves, my fellow-citizens, with the reflection that you may by a subsequent vote defeat the ratification of the constitution. Although most anxious to secure to you the exercise of that great constitutional right, and believing that the convention is the servant and not the master of the people, yet I have no power to dictate the proceedings of that body."

This language clearly conveys the idea that the convention might or might not submit the constitution to be formed by them to a vote of the people ; and so far from the people not being able to delegate power or to authorize others to make a constitution for them being true, as now contended for by Governor Walker, it follows most clearly, from what he says, that such authority could be given even by their silence. The authority conferred would be implied by their abstaining from the polls. On the question of the powers of the delegates to be elected to the convention Mr. Stanton addressed the people as follows :

"The government especially recognizes the territorial act which provides for assembling a convention to form a constitution with the view to making application to Congress for admission as a State into the Union. That act is regarded as presenting the only test of the qualification of voters for delegates to the convention, and all preceding repugnant restrictions are thereby repealed. In this light the act must be allowed to have provided for a full and fair expression of the will of the people through the delegates who may be chosen to represent them in the constitutional convention. I do not doubt, however, that, in order to avoid all pretext for resistance to the peaceful operation of this law, the convention itself will in some form provide for submitting the great distracting question

regarding their social institutions which has so long agitated the people of Kansas to a fair vote of all the actual *bona fide* residents of the Territory, with every possible security against fraud and violence. If the constitution be thus framed, and the question of difference thus submitted to the decision of the people, I believe that Kansas will be admitted by Congress without delay as one of the sovereign States of the American Union, and the territorial authorities will be immediately withdrawn."

Here Mr. Stanton clearly admits the full power of the delegates to be chosen to form a constitution, valid in itself, whether it be submitted or not for ratification. It is true, he expresses great confidence that the "distracting question," which was the slavery question, would be "in some form" submitted to a fair vote of the *bona fide* residents of the Territory, and the firm belief that if "the question of difference" should be submitted to the decision of the people Kansas would be admitted without delay. This is exactly what was done by the convention, as the testimony accompanying this report shows. As to the powers of the convention, however, the committee will cite but one other authority. That is a speech made by Judge Douglas at Springfield, Illinois, on the 12th June, 1857, just before the election of the delegates took place.

"Kansas," said he, "is about to speak for herself, through her delegates assembled in convention to form a constitution preparatory to her admission into the Union on an equal footing with the original States. Peace and prosperity now prevail throughout her borders. The law under which her delegates are about to be elected is believed to be just and fair in all its objects and provisions. There is every reason to hope and believe that the law will be fairly interpreted and impartially executed, so as to insure to every *bona fide* inhabitant the free and quiet exercise of the elective franchise. If any portion of the inhabitants, acting under the advice of political leaders in distant States, shall choose to absent themselves from the polls, and withhold their votes with a view of leaving the free-State democrats in a minority, and thus securing a pro-slavery constitution in opposition to the wishes of a majority of the people living under it, let the responsibility rest upon those who, for partisan purposes, will sacrifice the principles they profess to cherish and promote. Upon them, and upon the political party for whose benefit and under the direction of whose leaders they act, let the blame be visited of fastening upon the people of a new State institutions repugnant to their feelings and in violation of their wishes. The organic act secures to the people of Kansas the sole and exclusive right of forming and regulating their domestic institutions to suit themselves, subject to no other limitation than that which the Constitution of the United States imposes. The democratic party is determined to see the great fundamental principle of the organic act carried out in good faith. The present election law in Kansas is acknowledged to be fair and just. The rights of the voters are clearly defined, and the exercise of these rights will be efficiently and scrupulously protected. Hence, if the majority of the people of Kansas desire to have it a free State, (and we are told by the republican party that nine-tenths of the people of that Territory are free-State men,) there is no obstacle in the way of bringing Kansas into the Union as a free State by the votes and voice of her own people, and in conformity to the great principles of the Kansas-Nebraska act ;

provided all the free-State men will go to the polls and vote their principles in accordance with their professions. If such is not the result, let the consequences be visited upon the heads of those whose policy it is to produce strife, anarchy, and bloodshed in Kansas, that their party may profit by slavery agitation in the northern States of this Union."

In this speech there is not the slightest allusion whatever to a subsequent ratification of the constitution to be formed before it would have validity; not the slightest reference to any such construction of the Kansas-Nebraska act. The language is: "*Kansas is about to speak for herself through her delegates assembled in convention to form a constitution.*" It was in the choice of these delegates that the responsibility was to rest upon those who, for partisan purposes, under the control of leaders in distant States, should absent themselves from the polls. That was the time their voice was to be legally heard in the formation of a State constitution; and if they chose to be silent, then they were to be silent ever afterward. They would have nobody to blame but themselves.

It is true that Gov. Walker, while plainly telling the people that the convention would have full power to make a constitution without submitting it, also told them that, in *his judgment*, the entire constitution to be framed by them ought to be submitted to the decision of the people, and that if it were not, in his judgment Congress would not, and ought not to, admit the State under it. In this he differed widely from Mr. Stanton, and in making the declaration he greatly transcended his rightful power. He undertook to prescribe for Congress the exercise of a right they do not possess under the constitution of the United States. When a new State presents a constitution for admission Congress has no more power to inquire into the manner of its adoption than the matter of its substance. The matter cannot be inquired into further than to see that it is republican in form; and the mode and manner of its adoption cannot be inquired into only so far as to see that it has been formed in such way as the people have legally established for themselves. The doctrine of Governor Walker would be utterly subversive of all State rights and State sovereignty; for one of the unquestionable attributes of sovereignty is the absolute right to select its own mode of giving expression to its own will.

If, then, upon general principles, as well as from established usage, it clearly appears that the validity of a constitution does not necessarily depend upon its having received a popular ratification, is there anything in the Kansas bill that varies this case from former precedents? On this point Governor Walker says "these rights" (that is, the right of having the constitution as a whole submitted to a popular vote) "I have ever regarded as fully secured to the people of 'all the Territories' in adopting their State constitutions by the Kansas-Nebraska bill. Such is the construction of this Kansas act by its distinguished author, not only in his late most able argument, but by addresses made and published by him long antecedent to that date, showing that this sovereign power of the people in acting upon a State constitution is not confined to the question of slavery, but includes all other subjects in such an instrument. Indeed, I believe the Kansas-Nebraska bill would have violated the rights of sovereignty reserved

to the people of each State by the federal Constitution, if it had deprived them, or Congress should now deprive them, of the right of voting for or against their State constitution."

What part or clause of the Kansas act gave Governor Walker the idea that it secured not only to the people of that Territory, but "all other Territories," the rights he mentions, this committee are utterly at a loss to imagine. If there is a word or sentence in it which imbodyes any such security they have been unable to discover it; and if the distinguished senator from Illinois, who is thus styled the author of that bill, ever gave any such construction to it, antecedent to his "late" speech, this committee are not aware of it. If any such construction was put upon any part of it during its discussion in Congress in 1854, or afterward, or during the canvass of 1856, by that senator, or any person else, this committee are equally unaware of it. On the contrary, they have good evidence that no such construction was then or afterward, or up to the 12th June last, put upon it by the senator who is called its author. In the speech made by him on that day he certainly put no such construction on the bill. During the last Congress the same senator reported a bill, though he was not the author of it, providing for the call of a convention in Kansas to form a State constitution for admission in the Union. That bill made no provision for the submission of the work of the convention to a decision of the people. That was known as the Toombs bill. It passed the Senate, and received the vote of the senator from Illinois. In giving that vote, Governor Walker may believe that the senator "*violated the rights of sovereignty reserved to the people of each State by the federal Constitution,*" but he can hardly affirm that by it the senator gave that construction to the Kansas bill which the governor says he had so repeatedly given before his late speech. Indeed, the record of that senator shows that he did not deem it necessary, under the Kansas-Nebraska bill, to submit even the slavery question to a decision of the people. The language of the Kansas bill, as first reported by Senator Douglas, on this subject was in these words:

"All the questions appertaining to slavery in the Territory and in the new States to be formed therefrom are to be left to the decision of the people residing therein, through their appropriate representatives."

This shows that he then thought that the act of sovereignty, in determining this question on the formation of a constitution, could be performed by the people, through the "intermediate body" of "*representatives,*" as fully and completely as if done by themselves. The words finally adopted on this point in the bill, after declaring the restriction of 1820 null and void, were as follows:

"It being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."

If any inference is to be drawn from this change of phraseology, it is that the object aimed at by it was to leave even the slavery question to be settled, as all others had been before, by the people, in their own way, in conformity to law and the Constitution of the United States. If they chose to do it by representatives, the power was given them so

to do it; if they chose to do it by general popular vote, the power was given them to do it in that way. Congress was to abstain from all interference or intervention with or over their own way or manner of doing it, so that it was legally done under the Constitution of the United States.

The difficulty with Governor Walker seems to be, that they have chosen a way of their own different from the one that he would have had them to adopt. He wished them to decide that as well as other questions in his way; they preferred their own way to his. To correct this disobedient proceeding on their part, he seems to be willing now to shed the "last drop of his life's blood."

As before stated, the Lecompton convention did submit the slavery question to a popular vote. This was a matter entirely discretionary with themselves. In doing it, they were doubtless actuated by the most patriotic motives. This was the origin of all the strife in the Territory. This was the subject which Mr. Stanton had stated with so much confidence would "*in some way*" be submitted to a direct vote of the people. On the submission, every *bona fide* citizen in the Territory entitled to the elective franchise had a full and perfect right to vote upon it. If any abstained from voting, the fault was their own. They have no just cause to complain of Congress for admitting the State under a constitution with a clause which they do not like when they had a fair opportunity to vote it down, if they really have, as they pretend, a majority in the Territory. The official vote on the ratification, when so submitted, as will be seen by Exhibit No. 6, was as follows:

Constitution, with slavery.....	6,226
Constitution, without slavery.....	569

Making an aggregate of 6,795 voting on the question, and a majority of 5,657 for the constitution as now presented. This is certainly a very large majority of those joining in the election, if not a majority of all the voters in the Territory, in favor of the constitution as it is now before Congress; and according to the doctrine of Governor Walker, in his inaugural address, "those who abstain from the exercise of the right of suffrage authorized those who did vote to act for them, and the absentees are as much bound under the law as if all had participated in the election." If this view be correct, then no constitution ever came up with a stronger endorsement by popular vote, and every objection to its validity on the ground of its wanting even this sanction is utterly without foundation.

Another objection of the same class is, that no enabling act was passed by Congress, or in other words, that the legislature of Kansas did not have the legal right to call the convention that formed the constitution. This objection is equally untenable both on principle and authority. The power to call a convention to form a State constitution is clearly within the "*rightful subjects*" of legislation granted in the organic act. But even without that the precedents are numerous where conventions have been called without such a grant. Out of the eighteen new States heretofore admitted nearly half of them have come in under constitutions formed without any direct authority

of Congress. Amongst these may be named Tennessee, Michigan, Iowa, Texas, Arkansas, Kentucky, Florida, and California. In addition to this, it may be added that the most prominent of those who now urge this objection are estopped by their own declarations and admissions. Governor Walker, for instance, in his inaugural address in relation to the *right of the territorial legislature* to call a convention uses this language:

"But it is said that the convention is not legally called, and that the election will be not freely and fairly conducted. The territorial legislature is the power ordained for this purpose by the Congress of the United States, and in opposing it you resist the authority of the general government."

And again he says:

"The territorial legislature, then, in assembling this convention, were fully sustained by the act of Congress."

Mr. Stanton expresses similar sentiments in that part of his inaugural address before quoted, Judge Douglas, in his Springfield speech, also quoted, does not intimate that he then thought there was any necessity for an enabling act. Moreover, his position on the admission of California is well known. In that case a constitution had been sent up formed by a convention called together without the slightest pretext of legal authority, either from Congress or any territorial organization. A proclamation of a military commander was the sole foundation for it, and yet upon that occasion Judge Douglas said:

"I hold that the people of California had a right to do what they have done; yea, they had a moral, political, and legal right to do all they have done."

How any person could maintain the legality of the proceedings in the California case and deny them in Kansas, or hold that an enabling act by Congress was necessary in the Kansas case when it was not necessary in California, is incomprehensible to this committee. They dismiss this point without further remark.

But other objections of a different class and character have been started. These relate to the fairness of the election of delegates to the constitutional convention. On this head it is said that quite a number of counties, 19 in all, making more than half of the counties in the Territory, were disfranchised by the law of the 19th February, 1857, and were wholly unrepresented in the convention. By the statutes of Kansas, as all can see by reference, there are 37 counties laid out with names and boundaries in the Territory. Three of these—to wit: Washington, Clay, and Dickinson—were omitted in the act of the 19th February creating districts for the election of delegates. They lie in the extreme western frontier of the Territory, as will be seen by the map, and exist mainly in law and on paper. They seem to be destitute of population, without officers or civil organization. The 34 organized counties were all embraced in the act, as will be seen in the 19th section. By that section they are arranged into election districts, as follows:

- 1st district, Doniphan county.
- 2d " Brown and Nemaha counties.
- 3d " Atchison county.
- 4th " Leavenworth county.

5th district,	Jefferson county.
6th "	Calhoun county.
7th "	Marshall county.
8th "	Riley and Pottawatomie counties.
9th "	Johnson county.
10th "	Douglas county.
11th "	Shawnee, Richardson, and Davis counties.
12th "	Lykins county.
13th "	Franklin county.
14th "	Weller, Breckinridge, Wise, and Madison counties.
15th "	Butler and Coffee counties.
16th "	Lynn county.
17th "	Anderson county.
18th "	Bourbon, McGee, Dorn, and Allen counties.
19th "	Woodson, Wilson, Godfry, Greenwood, and Hunter counties.

The object of the law, as all its details plainly show, was to have as fair an election as possible. The registry of voters as required was made and returned for these districts as follows, as will be seen by Mr. Stanton's proclamation : (Exhibit No. 3.)

No. of district.	Names of counties.	No. of legal voters.
First	Doniphan	1,686
Second	Brown	206
	Nemaha	140
Third	Atchison	804
Fourth	Leavenworth	1,837
Fifth	Jefferson	555
Sixth	Calhoun	291
Seventh	Marshall	206
Eighth	Riley	353
	Pottawatomie	205
Ninth	Johnson	496
Tenth	Douglas	1,318
Eleventh	Shawnee, Richardson, and Davis	283
Twelfth	Lykins	413
Thirteenth	Franklin	No return.
Fourteenth	Four counties	No return.
Fifteenth	Two counties	No return.
Sixteenth	Lynn	413
Seventeenth	One county, (Anderson.)	No return.
Eighteenth	Bourbon, McGee, Allen, and Dorn	645
Nineteenth	Five counties	No return.
	Total	9,251

Upon this return of registration, showing 9,251 voters, (which, upon all reasonable probabilities, must have been within one or two thousand of all the legal voters at that time in the Territory,) the acting governor, as will be seen from the same exhibit, made an apportionment of representation, according to the provisions of the act. This was done by dividing the whole number of voters (9,251) by 60, the number of delegates constituting the convention, and apportioning

the delegates to the respective counties in districts, as above set forth, from which a registry had been reported. The apportionment was as follows :

1st district,	Doniphan county.....	7 delegates.
2d do	Brown and Nemaha.....	2 do
3d do	Atchison.....	5 do
4th do	Leavenworth.....	12 do
5th do	Jefferson.....	4 do
6th do	Calhoun.....	2 do
7th do	Marshall.....	1 do
8th do	Riley and Pottawatomie.....	4 do
9th do	Johnson.....	3 do
10th do	Douglas.....	8 do
11th do	Shawnee, Richardson, and Davis.....	2 do
12th do	Lykins.....	3 do
16th do	Lynn.....	3 do
18th do	Bourbon, McGee, Dorn, and Allen.....	4 do

From this it will be seen that twenty-one out of the thirty-four organized counties were embraced in the apportionment; and the journals of the convention (Exhibit No. 4) show that all these were represented in that body. From the same proclamation it will be seen that five election districts, embracing thirteen counties, were left out of the apportionment. These were, as will appear from what has been stated, the 13th district, being Franklin county; the 14th, including Weller, Breckinridge, Wise, and Madison; the 15th, Butler and Coffee; the 17th, Anderson county; and the 19th, Woodson, Wilson, Greenwood, Godfrey, and Hunter.

Of these thirteen counties nine had but a small population in them. This (apart from the statement of Mr. Calhoun and other reliable information) clearly appears from the returns of the election on the 4th January last, the official announcement of which is filed with the papers of this report. From that it will be seen that not a vote was returned as having been cast in that election in *seven* of these *thirteen* counties about the disfranchisement of which so much complaint has been made. These seven counties are Weller, Wise, Butler, Wilson, Godfrey, Greenwood, and Hunter. Nor was there a vote at that election in either of the three unorganized counties of Washington, Clay, and Dickinson.

In two of the thirteen counties stated above—to wit: Madison and Woodson—there were but 90 votes cast—40 in the former and 50 in the latter; and but 1,135 in the four remaining—to wit: Franklin, 304; Breckinridge, 191; Coffee, 453; and Anderson, 177; so that if the election of the 4th January should be received as evidence of anything, it would prove nothing more conclusively than that the clamor about the disfranchisement of half the people, or even a considerable portion of the people of the Territory, is utterly groundless, and resorted to only as a pretext for the want of something more solid. This pretext becomes the more glaring when the cause of there being no registry in these four counties of Franklin, Breckinridge, Anderson and Coffee is understood. This is fully explained not only by the

statement of Mr. Calhoun alluded to, but by the deposition of George Wilson, to be found in Senate Document No. 52, at this session. From these and other notorious facts, the real and true cause of a failure of registry of voters in these counties, and a consequent failure of representation being apportioned to them in the convention, too clearly appears to need much explanation. The parties in whose behalf the cry of disfranchisement is now raised, prevented the registry themselves. Since the organization of that Territory, there has been in it a class of men whose avowed object was to oppose and overthrow all legal authority. They went there with this purpose. Their object was to set up an *imperium in imperio*. In the language of the President, they have been in a "state of rebellion" against the legally constituted authorities from the beginning. This is fully established by numerous reports of Governors Shannon, Geary, and Walker, and Secretary Stanton. They were, to a certain extent, the emissaries of those who denounced the Kansas bill when it passed as a great "wrong" and an "outrage," and who were resolved to defeat its peaceful operation.

To show the groundlessness of the first clamor, as well as the last, we might here inquire what was the wrong or outrage of that bill? Was it a great wrong or outrage to permit the people of New York, Massachusetts, or other States of the north, as well as the people of the south going into a new Territory, the common property of all, to be as free as they were at their native homes, and in forming new States to enjoy the same rights which their fathers did in the formation of all our present State constitutions and governments? This is just what that bill did on the main question of controversy in Kansas—nothing more—nothing less. But, rather than see this great principle of right, justice and equality carried out, this class of men went to that Territory to defeat it at every hazard. Setting themselves up in defiance of law from the beginning, they now denounce a constitution made by those who conformed to law as "a fraud," "a cheat," and "a swindle." But the more *ultra* of the same party elsewhere have long since said much worse things of the Constitution of the United States. This class of malcontents in Kansas are organized in a party having the control of some of the counties. They refused to recognize the validity of the law requiring the registry to be made. They opposed its execution both by withholding their own names in some instances, and in others by driving the officers whose duty it was to make it, from the country, with threats to take the life of any who should attempt it. This was particularly the case in Anderson and Franklin counties. If, then, these counties were unrepresented in the convention, their *disfranchisement* was the work of their own people. Another significant fact to be noticed from the registry and apportionment together with the official report of the 4th January, is this: that the five counties, to wit, Leavenworth, Atchison, Douglas, Doniphan, and Jefferson, at that election cast an aggregate vote of 5,118, which is a majority of the whole vote reported to have been cast throughout the entire Territory against the constitution. And yet all these counties were registered and represented in the convention. They had thirty-six of the sixty

delegates of which that body was composed. Now, if it be true that the opponents of the constitution are so largely in the majority in those counties, and are so violent in their opposition, as they are represented to be, why did they not elect men to the convention who would have formed a constitution more to their liking? These counties alone, by the registry, had within four votes of two-thirds of the convention, and could have made just such a constitution as would have been most agreeable to their people. If they refused to act at the proper time, why do they complain now? If others, conforming to the law, went into the convention and formed a constitution to suit themselves, was it not their fair, just, and legal right to do it? These complaints come too late, even if they come from orderly, law-abiding citizens. As well might the thousands who abstained from the polls or threw away their votes, at the last presidential election, now come forward and claim that the present administration is illegal, and should be set aside, because the inaugurated Chief Magistrate did not receive a majority of all the legal voters of the United States, as for these people now to complain of the result of their own *laches* or illegal acts, or to seek to remedy it by any such irregular proceeding as the vote taken on the 4th January against the constitution, after it had been legally adopted.

But the inquiry is made whether the constitution is acceptable and satisfactory to a majority of the legal voters of Kansas. This is a matter the committee could not ascertain and report upon with certainty without polling every legal voter in the Territory; and if they had gone there and taken the vote themselves for and against the constitution, perhaps the majority might have varied from one side to the other, by death, emigration, or change of opinion, before their report could have been made. That course of investigation is wholly impracticable. The only proper mode of pursuing the legitimate inquiry before Congress, in the judgment of the committee, is to ascertain whether the constitution embodies the legally and fairly expressed will of those who by their acts acknowledge themselves to be *bona fide* citizens and constituent elements of the society or political community to be organized in a State within its jurisdiction. Those who by their acts show themselves not to be *bona fide* citizens, but *mala fide* residents, and even self-acknowledged outlaws by their open hostility to all civil authority, should not be considered or taken in the count. The convention that formed the constitution was as fairly constituted as could be with the view of allowing every *bona fide* citizen in Kansas entitled to vote to have a free opportunity to be heard in its formation. This Mr. Stanton said; this Governor Walker said; this Judge Douglas said; this also abundantly appears from the facts and evidence now submitted. The only correct test of the will of a majority of the *bona fide* voters of Kansas upon the subject of their constitution is that of the ballot-box, and such an expression of their will as has been there given at the proper time and place, in conformity to law. By this test a majority of them is certainly in favor of it. The majority of those going to the polls when the election of delegates, with full and plenary power took place, was largely in favor of those who made the constitution; and when the direct question on the slavery

clause was submitted on the 21st December, the like majority was overwhelmingly in favor of it. On the 4th January, in the election of State officers under the constitution, it is well known that both parties joined in a vigorous contest for the organization of the State under it. Upwards of 12,000 voters participated in that election. That vote shows most clearly that the constitution is not only *acceptable*, but has *been accepted* by at least four-fifths of the voters of the Territory, though it may not be entirely satisfactory to all of them.

As to the alleged frauds on the 4th January for State officers under the constitution, the committee have not deemed it pertinent or proper for them to enter into any investigation. They are matters to be inquired into and tried by other tribunals, as all frauds in other State elections are. This House can have no jurisdiction over them in any way; no more than they have over the frauds, if any, in the States of New York, Indiana, Illinois, or any other State in elections for State officers. Should Kansas be admitted, and the seat of the member returned to this House be contested on the ground of alleged frauds, then this House would be the proper tribunal to decide that question. There will be other legitimate tribunals to decide all others.

Upon a review, then, of all these facts, and a survey of the whole field here presented as a question of public policy, looking not only to the present and future welfare of the people of Kansas, but to the peace and harmony of the whole Union, the committee, in conclusion, express their entire agreement with the President in his recommendation of the immediate admission of the State.

That a large number of the States would look upon her rejection, under all the circumstances, with extreme sensitiveness, if not alarm, cannot be denied or doubted. This is natural. When they see that no new State has ever presented herself for admission with a constitution formed and adopted with greater regularity and more strictly in conformity to law; when they remember the irregularities that were waived on the admission of California, whose constitution was formed without any legal authority; when they see the irregularities in the case of Minnesota now applying, which will doubtless be waived; when they feel and know that no valid or well founded objection can be made to the constitution of Kansas, either in its substance or manner of adoption, except that it recognizes slavery so long as the sovereign State may choose to allow it; when they know that the fiat has gone forth by that party which mainly urges these unusual objections, that no State whose constitution recognizes slavery shall ever hereafter be admitted into the Union, and that the rejection of Kansas would increase and inflame that factions, sectional, and unconstitutional spirit—is it not natural that they should come to the conclusion that the real secret of its rejection is this bare recognition of an institution which forms the basis of their civil society? Is it not natural that this act would strongly tend to produce distrust towards the common government, by awakening a conviction that a determination is fixed by the majority never to allow another member of the federal family to enter the Union with institutions similar to theirs? Will not her rejection tend to weaken the bonds which hold the States together? These are grave questions, involving in their solution the destinies of

the future. The committee barely allude to them; they are suggestive enough of themselves without comment or enlargement. But the committee urge their calm and dispassionate consideration, especially as it is believed by them the peace, quiet, welfare, and prosperity of Kansas herself will be promoted by her admission, as well as the general harmony of all the States. If it be true that a majority of the people of Kansas are opposed to the institution of slavery, as now recognized by her constitution, what easier mode could be adopted for them to rid themselves of it than to allow them to take charge of this with all other matters of internal policy, clothed with the exercise of all powers belonging to them as a sovereign State of the Union? There is nothing now in their constitution more objectionable on this point than is to be found in their organic act and the Constitution of the United States, under which they must continue so long as they remain in a territorial condition. The argument that Congress, by the admission, will be forcing any institution whatever upon an unwilling people, is as gratuitous as it is groundless, even if a majority there be opposed to slavery. For by the Constitution of the United States slavery is as much forced upon them as by the constitution of Kansas. This Congress cannot prevent, and this will continue to be the case until it is removed, if ever, by the sovereign power of the State.

The committee, therefore, report the following resolution:

Resolved, That Kansas ought to be admitted as a State into the Union under the Leecompton constitution on an equal footing with the other States, as recommended by the President.

Resolved, That the message of the President concerning the constitution framed at Leecompton, in the Territory of Kansas, by a convention of delegates thereof, and the papers accompanying the same, be referred to a select committee of fifteen, to be appointed by the Speaker; that said committee be instructed to inquire into all the facts connected with the formation of said constitution, and the laws under which the same was originated, and into all such facts and proceedings as have transpired since the formation of said constitution having relation to the question, or propriety of the admission of said Territory into the Union under said constitution, and whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas; and that said committee have power to send for persons and papers.

Committee under foregoing resolution.

Mr. THOMAS L. HARRIS, <i>Illinois.</i>	Mr. WHITE, <i>Pennsylvania.</i>
Mr. ALEXANDER H. STEPHENS, <i>Georgia.</i>	Mr. WALBRIDGE, <i>Michigan.</i>
Mr. MORRILL, <i>Vermont.</i>	Mr. ANDERSON, <i>Missouri.</i>
Mr. LETCHER, <i>Virginia.</i>	Mr. STEVENSON, <i>Kentucky.</i>
Mr. WADE, <i>Ohio.</i>	Mr. ADRAIN, <i>New Jersey.</i>
Mr. QUITMAN, <i>Mississippi.</i>	Mr. BUFFINTON, <i>Massachusetts.</i>
Mr. WINSLOW, <i>North Carolina.</i>	Mr. RUSSELL, <i>New York.</i>
Mr. BENNET, <i>New York.</i>	

EXHIBIT No. 1.

AN ACT to provide for the call of a convention to form a State constitution.

Be it enacted by the governor and legislative assembly of the Territory of Kansas as follows:

SECTION 1. That there shall be, at the first general election to come off in October, 1856, a poll opened at the several places of voting throughout this Territory, for taking the sense of the people of this Territory upon the expediency of calling a convention to form a State constitution.

SEC. 2. It shall be the duty of the judges at the several election precincts in this Territory, at the election aforesaid, to cause a poll to be opened, which poll shall contain two columns, one to be headed "convention," the other "no convention;" and they shall cause the vote of each individual voter to be set in the appropriate column.

SEC. 3. All persons qualified by the laws of the Territory to vote for members of the general assembly shall be entitled to vote for or against said convention.

SEC. 4. At the close of said election, at the several precincts in this Territory, the judges thereof shall cause an abstract of the votes given for and against a convention to be made out and certified to the secretary of the Territory.

SEC. 5. The secretary of the Territory shall, from the abstract of votes certified to him to be cast "for" and "against" "convention" by the said judges of elections, make a full report of the same to the next legislature thereof.

SEC. 6. If a majority of persons shall vote in favor of "convention" at said election held therefor, then it shall be the duty of the legislature held next after the said election to provide for and make all necessary provisions for an election of members to said convention, defining their duties, &c.

This act to take effect and be in force from and after its passage.

EXHIBIT No. 2.

AN ACT to provide for the taking a census, and the election of delegates to a convention:

Be it enacted by the governor and legislative assembly of the Territory of Kansas as follows:

SECTION 1. That for the purpose of making an enumeration of the inhabitants entitled to vote under the provisions of this act, an apportionment, and an election of members of a convention, it shall be the duty of the sheriffs of the several counties in Kansas Territory, and they are hereby required, between the first day of March and the first

day of April, eighteen hundred and fifty-seven, to make an enumeration of all the free male inhabitants, citizens of the United States, over twenty-one years of age, and all other white persons actually residing within their respective counties, and for this purpose shall have power to appoint one or more deputies to assist in such duties, not to exceed one in each municipal township, each of whom, before entering upon his office, shall take and subscribe an oath or affirmation to support the Constitution of the United States, and faithfully and impartially discharge the duties imposed on him by this act, according to the best of his skill and judgment, which oath or affirmation shall be administered to them severally, and be duly certified by a judge or clerk of the district court of the United States, or judge or clerk of the probate court for the several counties, or by a justice of the peace, and filed and recorded in the office of the secretary of the Territory.

SECTION 2. In case of any vacancy in the office of sheriff, the duties imposed on such sheriff by this act shall devolve upon, and be performed by, the judge of the probate court of the county in which such vacancy may exist, who may appoint deputies, not to exceed one in each municipal township; and in case the office of both sheriff and probate judge in any county shall be or become vacant, the governor shall appoint some competent resident of such county to perform such duty, who shall have the same right to appoint deputies, take and subscribe the same oath, and perform all the requirements of this act, as applied to sheriffs.

SECTION 3. It shall be the duty of the sheriff, probate judge, or person appointed by the governor as herein provided, in each county or election district, on or before the tenth day of April next, to file in the office of the probate judge for such county or election district, a full and complete list of all the qualified voters resident in his said county or election district, on the first day of April, eighteen hundred and fifty-seven, which list shall exhibit in a fair and legible hand the names of all such legal voters.

SECTION 4. It shall be, and is hereby made, the duty of each probate judge, upon such returns being made without delay, to cause to be posted at three of the most public places in each election precinct in his county or district, one copy of such list of qualified voters, to the end that every inhabitant may inspect the same, and apply to said probate judge to correct any error he may find therein, in the manner hereafter prescribed.

SECTION 5. Said probate judge shall remain in session each day, Sundays excepted, from the time of receiving said returns until the first day of May next, at such places as shall be most convenient to the inhabitants of the county or election district, and proceed to inspection of said returns, and hear, correct, and finally determine according to the facts, without unreasonable delay, all questions concerning the omission of any person from said returns, or the improper insertion of any name on said returns, and any other questions affecting the integrity or fidelity of said returns, and for this purpose shall have power to administer oaths and examine witnesses, and compel their attendance in such manner as said judge shall deem necessary.

SECTION 6. That as soon as the said list of legal voters shall thus have been revised and corrected, it shall be the duty of the several probate judges to make out full and fair copies thereof, and without delay furnish to the governor of the Territory one copy, and to the secretary of the Territory one copy; and it shall be the duty of the governor to cause copies thereof, distinguishing the returns from each county or election district, to be printed and distributed generally among the inhabitants of the Territory, and one copy shall be deposited with the clerk of each court of record, or probate judge, within the limits of said Territory, and one copy delivered to each judge of the election, and at least three copies shall be posted up at each place of voting.

SECTION 7. It shall be the duty of the governor and secretary of the Territory, so soon as the census shall be completed and returns made, to proceed to make an apportionment of the members for the convention among the different counties and election districts in said Territory, in the following manner: the whole number of legal voters shall be divided by sixty, and the product of such division, rejecting any fraction of a unit, shall be ratio or rule of apportionment of members among the several counties or election districts; and if any county or election district shall not have a number of legal voters then ascertained, equal to the ratio, it shall be attached to some adjoining county or district, and thus form a representative district; the number of said voters in each county or district shall then be divided by the ratio, and the product shall be the number of representatives apportioned to such county or district: *Provided*, that the loss in the number of members, caused by the fraction remaining in the several counties in the division of the legal voters thereof, shall be compensated by assigning so many counties or districts as have the largest fraction, an additional member for its fraction as may be necessary to make the whole number of representatives sixty.

SECTION 8. An election shall be held for members of a convention to form a constitution for the State of Kansas, according to the apportionment to be made as aforesaid, on the third Monday in June next, to be held at the various election precincts established in the Territory, in accordance with the provisions of the law on that subject; and, at such election, no person shall be permitted to vote unless his name shall appear upon said corrected list.

SECTION 9. The board of county commissioners shall appoint the places of voting for their respective counties or election districts; they shall appoint three suitable persons to be judges of the election at each place of voting; they shall cause a notice of the places of holding elections in their respective counties or districts to be published and distributed in every election district or precinct ten days before the day of election. If any judge of election so appointed shall fail or refuse to perform the duties of his said office, the legal voters assembled at the place, and on the day appointed for said election, shall have the power to fill such vacancy by election among themselves.

SECTION 10. The judges of election shall each, before entering on the discharge of his duties, make oath or affirmation that he will faithfully and impartially discharge the duties of judge of the election

according to law, which oath shall be administered by any officer authorized to administer oaths; the clerks of election shall be appointed by the judges, and they shall take the like oath or affirmation, to be administered by one of the judges, or by any of the officers aforesaid. Duplicate returns of election shall be made and certified by the judges and clerks, one of which shall be deposited with the board of county commissioners for the county or district in which the election is held, and the other shall be transmitted to the secretary of the Territory; and the one having the highest number of votes in his county or election district shall be the representative for such county or district; and in case of a tie, or a contest in which it cannot be satisfactorily determined who was duly elected, the convention, when assembled, shall order a new election, as herein provided.

SECTION 11. Every *bona fide* inhabitant of the Territory of Kansas on the third Monday of June, one thousand eight hundred and fifty-seven, being a citizen of the United States, over the age of twenty-one years, and who shall have resided three months next before said election in the county in which he offers to vote, and no other person whatever shall be entitled to vote at said election; and any person qualified as a voter may be a delegate to said convention, and no other.

SECTION 12. All persons hereby authorized to take the census, or to assist in the taking thereof, shall have power to administer oaths and examine persons on oath, in all cases where it may be necessary to the full and faithful performance of their duties under this act.

SECTION 13. If any person by menaces, threats, or force, or by any other unlawful means, shall directly or indirectly attempt to influence any qualified voter in giving his vote, or deter him from going to the polls, or disturb or hinder him in the free exercise of his right of suffrage at said election, the person so offending shall be adjudged guilty of a misdemeanor, and punished by a fine not less than five hundred dollars, or by imprisonment not less than three months nor more than six, or by both.

SECTION 14. That every person, not being a qualified voter according to the provisions of this act, who shall vote at any election within said Territory knowing that he is not entitled to vote, and every person who at the same election shall vote more than once, whether at the same or a different place, shall be adjudged guilty of a misdemeanor, and punished by a fine of not less than one hundred dollars nor exceeding two hundred, or by imprisonment not less than three months nor exceeding six, or both.

SECTION 15. Any person whatsoever who may be charged with holding the election herein authorized, who shall wilfully and knowingly commit any fraud or irregularity whatever, with the intent to hinder, or prevent, or defeat a fair expression of the popular vote in the said election, shall be guilty of a misdemeanor, and punished by fine not less than five hundred dollars nor more than one thousand dollars, and imprisonment not less than six months nor more than twelve months, or both.

SECTION 16. The delegates thus elected shall assemble in convention at the capital of said Territory on the first Monday of September next, and shall proceed to form its constitution and State government, which

shall be republican in its form, for admission into the Union, on an equal footing with the original States in all respects whatever, by the name of the State of Kansas.

SECTION 17. Said convention, when assembled, shall elect a presiding officer, and also other officers necessary for the transaction of their business; and the members and officer of said convention shall be entitled to receive the same compensation as the members and officers of the legislative assembly of Kansas Territory, to be paid out of any money in the treasury not otherwise appropriated.

SECTION 18. All sheriffs and other officers, for the discharge of the duties required of them by this act, shall be entitled to receive four dollars for each day they are necessarily employed.

SECTION 19. Doniphan county shall constitute the first election district; Brown and Nemaha, the second; Atchison, the third; Leavenworth, the fourth; Jefferson, the fifth; Calhoun, the sixth; Marshall, the seventh; Riley, the eighth; Johnson, the ninth; Douglas, the tenth; Shawnee, Richardson, and Davis, the eleventh; Lykins, the twelfth; Franklin, the thirteenth; Weller, Breckenridge, Wise, and Madison, the fourteenth; Butler and Coffey, the fifteenth; Linn, the sixteenth; Anderson, the seventeenth; Bourbon, McGee, Donn, and Allen, the eighteenth; Woodson, Wilson, Godfrey, Greenwood, and Hunter, the nineteenth.

SECTION 20. All votes given at the election herein provided for shall be *visa voce*.

SECTION 21. Returns of said enumeration shall be according to the following tabular form:

No.	Names of voters.	Heads of families and others.	Males.	Females.	Total.

This bill having been returned by the governor with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, it has become a law, this the 19th day of February, A. D. 1857.

EXHIBIT No. 3.

[From the Lawrence Republican of the 28th of May, 1857.]

Proclamation.

UNITED STATES OF AMERICA, TERRITORY OF KANSAS.

To the legal voters and election officers of Kansas :

Whereas the following returns of the census, taken under the act of the legislative assembly, entitled "An act to provide for the taking of a census and election for delegates to convention," passed the 19th February, 1857, have been made to me, to wit :

Districts.	Names of counties.	No. of legal voters.	Whole population.
First district.....	Doniphan.....	1,086	4,120
	Brown.....	206	No return.
Second district.....	Nemaha.....	140	512
Third district.....	Atchison.....	804	2,807
Fourth district.....	Leavenworth.....	1,837	5,529
Fifth district.....	Jefferson.....	555	No return.
Sixth district.....	Calhoun.....	291	885
Seventh district.....	Marshall.....	206	415
Eighth district.....	Riley.....	353	No return.
	Pottawatomie.....	305	641
Ninth district.....	Johnson.....	496	890
Tenth district.....	Douglas.....	1,318	3,727
	Shawnee.....		
Eleventh district...	Richardson.....	283	
	Davis.....		
Twelfth district.....	Lykins.....	413	1,352
Thirteenth district..	Franklin.....	No return.	
Fourteenth district..	Four counties.....	No return.	
Fifteenth district...	Two counties.....	No return.	Woodson, Coffey, Allen.
Sixteenth district...	Linn.....	413	1,821
Seventeenth district..	1.....	No return.	Anderson.
Eighteenth district..	Bourbon, Donn, } McGee, & Allen. }	645	2,622
Nineteenth district..	5.....	No return.	Woodson, Wilson, Godfrey, Greenwood, Hunter.
	Total.....	9,251	

Now, therefore, I, Frederick P. Stanton, secretary and acting governor, do hereby proclaim that, according to the provisions of said act and the census returns made in pursuance thereof, and upon a proper apportionment among the legal voters of the several districts aforesaid, they are respectively entitled to elect to the convention,

provided for in said law, the number of delegates, severally, herein assigned to them, that is to say:

To the	
First district, Doniphan county.....	7 delegates.
Second district, Brown and Nemaha counties.....	2 "
Third district, Atchison county.....	5 "
Fourth district, Leavenworth county.....	12 "
Fifth district, Jefferson county.....	4 "
Sixth district, Calhoun county.....	2 "
Seventh district, Marshall county.....	1 "
Eighth district, Riley and Pottawattomie counties.....	4 "
Ninth district, Johnson county.....	3 "
Tenth district, Douglas county.....	8 "
Eleventh district, Shawnee, Richardson, and Davis counties.....	2 "
Twelfth district, Lykins county.....	3 "
Sixteenth district, Linn county.....	3 "
Eighteenth district, Bourbon, McGee, Donn, and Allen counties.....	4 "

The proper officers will hold the election for delegates to said convention on the third Monday in June next, as directed by the law aforesaid, and in accordance with the apportionment herein made and declared.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the Territory, at Leocompton, this the 20th [L. S.] of May, 1857.

FRED. P. STANTON.

EXHIBIT No. 3.

Pursuant to the provisions of law, a convention to form a State constitution assembled at the capitol, in the city of Leocompton, Kansas Territory, on the 7th day of September, A. D. 1857, at 2 o'clock p. m., when,

On motion of Mr. Boling, Mr. Little was elected president *pro tem*.

On motion of Mr. Vanderslice,

Thomas C. Hughes was elected secretary *pro tem*.

On motion of Mr. Danforth,

James H. Nounnan was elected assistant secretary *pro tem*.: Whereupon,

On motion of Mr. Moore to appoint a committee of five on credentials,

Mr. Calhoun asked for the calling of the roll prepared by the secretary of the Territory, which, on being called, the following members answered to their names, viz:

<i>Doniphan County.</i>	S. P. Blair.
Jas. J. Reynolds.	William Mathews.
Daniel Vanderslice.	Milton E. Bryant.
	Thomas J. Key.

Brown and Nemaha Counties.

Henry Smith.
Cyrus Dolman.

Johnson County.

George W. McKown.
J. H. Danforth.

Atchison County.

Junius T. Hereford.
James Adkins.
J. S. Hascall.
John S. Randolph.

Douglas County.

W. S. Wells.
W. T. Spicely.
L. S. Boling.
John Calhoun.
John M. Wallace.
A. W. Jones.
Harrison Butcher.
Owen C. Stewart.

Leavenworth County.

Hugh M. Moore.
Lucien J. Fastin.
John D. Henderson.
John W. Martin.
W. Christerson.
Jesse Connell.
Green B. Redman.
Samuel J. Kookagee.

Shawnee County.

S. G. Reid.
Rush Elmore.

Lykins County.

David Lykins.
William A. Heiskill.

Jefferson County.

Alexander Bayne.
W. H. Swift.
Thomas D. Chiles.

Linn County.

J. H. Barlow.
S. H. Hays.
George Overstreet.

Marshall County.

William H. Jenkins.

*Bourbon, Allen, McGee and Dona Counties.**Calhoun County.**Riley and Pottawatomie.*

B. Little.
D. F. Greenwood.
G. B. Hamilton.

Mr. Moore then renewed his motion, which was carried.

The president announced as the committee Messrs. Moore, Boling, Lykins, Adkins, and Hamilton.

Mr. Henderson moved to adjourn until to-morrow, 11 o'clock. Lost.

Mr. Jenkins then offered the following resolution:

Resolved, That the regular officers of this convention shall consist of a president, one vice president, a secretary and assistant secretary, one reporter, sergeant-at-arms, and doorkeeper.

Mr. Jones, of Douglas, moved to amend by striking out "vice president" and inserting "president *pro tem*." Agreed to.

Mr. Henderson moved to amend by striking out one and inserting two assistant secretaries, which, on motion of Mr. Key, was laid on the table.

Whereupon, the above resolution was adopted.

On motion of Mr. Calhoun,

The secretary was ordered to procure printed lists of the members of the convention, as contained in the list furnished by the territorial secretary.

On motion of Mr. Eastin, the convention adjourned until to-morrow at 10 o'clock.

TUESDAY, *September 8, 1857.*

Convention met, pursuant to adjournment.

The minutes of yesterday were read and approved.

Mr. Moore, chairman of the Committee on Credentials made the following report:

Mr. President: The undersigned, the committee appointed to examine the evidence furnished this convention in reference to the right of membership, ask leave to report that they find the following named persons duly entitled.

Jas. J. Reynolds, Daniel Vanderslice, H. W. Fireman, S. P. Blair, William Mathews, Milton E. Bryant, Thomas J. Key, Henry Smith, C. Dolman, J. T. Hereford, John H. Randolph, James Adkins, J. S. Haskell, P. H. Larey, Hugh M. Moore, James Doniphan, Jarret Todd, Lucien J. Eastin, John D. Henderson, John W. Martin, M. D. Rively, W. Christerson, Jesse Connell, G. B. Redman, Samuel J. Kookagee, William Walker, Alexander Bayne, W. H. Swift, Thomas D. Chiles, F. H. Stewart, H. D. Oden, James Kuykendall, William H. Jenkins, P. Z. Taylor, John S. Randolph, C. R. Mobley, W. H. Davis, George W. McKown, B. M. Jones, J. H. Danforth, W. S. Wells, W. T. Spicely, L. S. Boling, J. Calhoun, John M. Wallace, A. N. Jones, Harrison Butcher, Owen C. Stewart, Rush Elmore, David Lykins, William A. Heiskill, J. S. Bradford, J. H. Barlow, J. H. Hays, Geo. Overstreet, H. T. Wilson, B. Little, D. F. Greenwood, G. P. Hamilton, and S. G. Reid.

On motion of Mr. McKown, the above report was received and adopted.

Mr. Jenkins offered the following resolution:

Resolved, That the members of the constitutional convention be required to take an obligation of fidelity to the Constitution of the United States and the organic act of the Territory, known as the Kansas and Nebraska act, and that the oath be administered by a legally authorized officer of justice.

Mr. Jones, of Douglas, moved to amend by inserting after the word act "and faithfully discharge the duties imposed upon them as delegates of this convention;" accepted.

Mr. Boling moved to strike out the words "of justice;" agreed to. The resolution was then adopted. Whereupon,

On motion of Mr. Calhoun, Judge R. C. Bishop was called upon to administer the obligation to the different members in accordance with the above resolution; when,

On motion of Mr. Jones, of Douglas, the oaths were administered accordingly.

Mr. Eastin moved that we now proceed to the election of officers of this convention.

Mr. Jones then offered the following resolution :

Resolved, That the vote in this election be "*viva voce*," and a majority of all the votes cast shall be necessary to constitute an election.

Adopted.

On motion of Mr. Eastin,

Ordered, That the convention proceed to the election of a president of this convention.

Whereupon,

Mr. McKown nominated John Calhoun.

Mr. Reid nominated Rush Elmore.

Mr. Vanderslice nominated Lucien J. Eastin.

The votes having been received and counted were declared to stand as follows :

For John Calhoun.....	27
Rush Elmore.....	12
Lucien J. Eastin.....	6

Those voting for Mr. Calhoun are,

Messrs. Adkins, Boling, Butcher, Christerson, Connell, Dolman, Doniphan, Danforth, Eastin, Elmore, Greenwood, Hereford, Hascall, Henderson, Hamilton, Jenkins, Jones, of Douglas, Kookagee, Kuydendall, Little, Moore, Martin, McKown, Redman, Randolph, Wells, and Wallace—27.

Those voting for Mr. Elmore are,

Messrs. Blair, Bryant, Bayne, Calhoun, Heiskell, Key, Lykins, Mathews, Reynolds, Reid, Spicely, and Stewart, of Douglas—12.

Those voting for Mr. Eastin are,

Messrs. Barlow, Childs, Hays, Overstreet, Smith, and Vanderslice—6.

Mr. Calhoun, having received a majority of the votes given, was declared duly elected president of this convention, and

Messrs. Moore, Boling and Hamilton were then designated as a committee to conduct the president elect to the chair.

Mr. Jenkins moved to go into an election for president *pro tem.*, and nominated Hugh M. Moore. Whereupon,

On motion of Mr. Hamilton, the rules were suspended, and Mr. Moore was elected president *pro tem.* by acclamation.

The convention now proceeded to elect a secretary.

Mr. Vanderslice nominated Thomas C. Hughes.

Mr. Danforth nominated James H. Nounnan.

Mr. Boling nominated Samuel B. Ford.

The votes, having been received and counted, were declared to stand as follows :

For J. C. Hughes.....	30
J. H. Nounnan.....	11
S. B. Ford.....	4

Those voting for Mr. Hughes are,

Messrs. Blair, Bryant, Butcher, Bradford, Barlow, Christerson, Connell, Chiles, Calhoun, Dolman, Doniphan, Eastin, Greenwood, Henderson, Jenkins, Key, Kookogee, Kuykendall, Lykins, Little,

Mathews, Moore, Martin, Reynolds, Redman, Reid, Stewart, of Douglas, Vanderslice, Wells, and Wallace—30.

Those voting for Mr. Nounnan are,

Messrs. Bayne, Danforth, Elmore, Hereford, Heiskill, McKown, Adkins, Overstreet, Smith, Randolph, and Spicely—11.

Those voting for Mr. Ford are,

Messrs. Boling, Barton, Hascall, and Jones, of Douglas—4.

Mr. Hughes, having received the highest number of votes given, was declared duly elected secretary of this convention.

The convention now proceeded to the election of an assistant secretary ; whereupon

Mr. Randolph nominated James H. Nounnan.

Mr. Elmore nominated James Armstrong.

The votes having been received and counted, were declared to stand as follows :

For James H. Nounnan	30
James Armstrong	15



Those voting for Mr. Nounnan are,

Messrs. Bryant, Boling, Butcher, Christerson, Connell, Chiles, Dolman, Danforth, Eastin, Greenwood, Hereford, Hascall, Henderson, Hays, Hamilton, Jenkins, Jones, of Douglas, Kuykendall, Lykins, Little, Moore, Martin, McKown, Overstreet, Redman, Smith, Randolph of Riley, Stewart of Douglas, Vanderslice, and Wallace—30.

Those voting for Mr. Armstrong are,

Messrs. Adkins, Blair, Bayne, Barlow, Calhoun, Doniphan, Davis, Elmore, Heiskill, Key, Mathews, Reynolds, Reid, Wells, and Spicely—15.

Mr. Nounnan having received a majority of all the votes cast, was declared duly elected assistant secretary of this convention.

The secretary and assistant secretary having been sworn in,

The convention proceeded to the election of reporter ; when

Mr. McKown nominated P. H. Carey.

Mr. Eastin nominated Scully.

The votes, having been received and counted, were declared to stand as follows :

For Mr. Carey	29
Mr. Scully	16

Those voting for Mr. Carey are,

Messrs. Adkins, Bayne, Boling, Butcher, Christerson, Connell, Calhoun, Dolman, Doniphan, Elmore, Greenwood, Hereford, Hascall, Henderson, Heiskill, Hays, Hamilton, Jones of Douglas, Kookagee, Lykins, Little, McKown, Reid, Smith, Randolph of Riley, Spicely, Stewart of Douglas, Wells, and Wallace—29.

Those voting for Mr. Scully are,

Messrs. Blair, Bryant, Barlow, Chiles, Danforth, Eastin, Jenkins, Key, Kuykendall, Mathews, Moore, Martin, Overstreet, Reynolds, Redman, and Vanderslice—16.

Mr. Carey, having received a majority of all the votes cast, was declared duly elected reporter of this convention.

The convention now proceeded to the election of ~~serg~~ ant-at-arms.
Whereupon,

On motion of Mr. Little,
Samuel Cramer was put in nomination.

Mr. Vanderslice moved that the rules be suspended, and Mr. Cramer be elected by acclamation, which was carried unanimously; and

Mr. Cramer was declared duly elected sergeant-at-arms of this convention by acclamation.

The convention then proceeded to the election of doorkeeper.

Whereupon,

Mr. Eastin nominated Mr. Jackson.

Mr. McKown nominated Mr. William Cook.

Mr. Jones nominated Mr. James Wallace.

Mr. Cook, on the second ballot, having received a majority of all the votes cast, was declared duly elected doorkeeper.

On motion of Mr. Elmore, the following resolution was adopted by the convention :

Resolved, That reporters of newspapers be allowed seats on this floor.

On motion of Mr. Henderson, the following resolution was adopted by the convention :

Resolved, That the sergeant-at-arms be empowered to employ two pages to wait upon the members of this convention.

On motion of Mr. Elmore, the following certificate from the secretary of the Territory was read and received :

UNITED STATES OF AMERICA, }
Territory of Kansas. }

I, Frederick P. Stanton, secretary of the said Territory, do certify that returns of an election, purporting to have been held in the county of Anderson, on the 15th June last, for delegates to the constitutional convention, were duly received at this office, by which it appears that R. Gilpatrick and J. Y. Campbell each received thirty-one votes, there being only thirty-two votes cast.

I also certify that informal returns of a census taken in said county, after the period for taking the census under the law had expired, were received at this office and placed on file; but the said county of Anderson was not included in the apportionment for delegates to the said convention, because the returns aforesaid were not made in conformity to the law and in time for the apportionment.

Given under the seal of the Territory, at Lecompton, this 7th day of September, 1857.

FRED. P. STANTON, [L. S.]

Which certificate, on motion of Mr. Elmore, was referred to a select committee of five.

Ordered, That Messrs. Elmore, Boling, Danforth, Eastin, and Dolman constitute said committee.

On motion of Mr. Jenkins, the following resolution was adopted :

Resolved, That the Rev. Mr. Magee, of Lecompton, is hereby declared the chaplain of this convention, and that the secretary be directed to inform him of the same.

Mr. Key introduced the following resolution, which was adopted:
Resolved, That the president appoint a committee of five to present rules of order to govern the deliberations of this convention.

Ordered, That Messrs. Key, Jenkins, Moore, Little, and Jones be said committee.

On motion of Mr. Haskall,

Resolved, That we proceed to draw for seats in this convention, and that said drawing be conducted as follows, viz: That pieces of paper to the number of sixty, numbered from one to sixty inclusive, be placed promiscuously together, and each member draw one number, which number shall be his seat during the sitting of this convention.

Upon motion of Mr. Eastin, the convention adjourned until to-morrow morning at 10 o'clock.

WEDNESDAY, *September 9, 1857.*

Convention met pursuant to adjournment.

The minutes of yesterday were read, corrected and approved; after which,

Prayer by the Rev. Mr. Magee.

Messrs. Balt. Jones, John S. Randolph, P. H. Larey, and C. R. Mobley made their appearance, and were sworn as members of this convention.

Mr. Key, chairman of the committee appointed for the purpose of presenting rules of order to govern this convention, asked leave to report the following:

Rule 1. Upon the arrival of the hour of meeting the president shall call the convention to order, and in his absence the president pro tem. shall perform his duties.

Rule 2. Prayer by the chaplain.

Rule 3. Reading of the minutes and corrections made.

Rule 4. The president shall preserve order and decorum, and decide questions of order—subject to an appeal of the convention; he shall have the right to name any member to perform the duties of the chair, but such substitution shall not extend beyond the hour of adjournment.

Rule 5. All motions and addresses to be made to the president, the member rising from his seat.

Rule 6. No motion to be put or debated unless seconded, and to be reduced to writing if required by the president or any member of the convention.

Rule 7. Any member is entitled to call for the yeas and nays on any question pending.

Rule 8. If two or more members shall rise at once, the president shall name the member who is entitled to the floor.

Rule 9. On a call to order, the member so called to order shall immediately sit down until permitted by the president to proceed.

Rule 10. The member speaking shall not be interrupted during his remarks, either by conversation of other members, or by the passing of members between him and the chair.

Rule 11. In debate there shall be no personal reference.

Rule 12. No motion or resolution can be withdrawn after it is put, unless by consent of the convention.

Rule 13. All committees to be appointed by the president, unless otherwise ordered.

Rule 14. No persons to be admitted inside of the bar of the convention except members or officers, unless by consent of the chair, or convention by vote.

Rule 15. The previous question shall always be in order in convention if seconded by a majority, and until it is decided all amendment and debate shall be precluded. The question shall be put in this form: "Shall the main question be now put?" If it shall be decided that the question should not now be put, the main question shall still remain under consideration. If seconded, the questions will then be taken in their order, without further debate.

Rule 16. In forming committees of the whole, the president, before leaving the chair, shall appoint a chairman.

Rule 17. No member shall speak more than twice on the same question unless by consent of the convention.

Rule 18. A motion for reconsideration shall be in order at any time if made by a member voting in the majority, and within twenty-four hours after the vote is taken.

Rule 19. The preceding rules shall be observed in committee of the whole so far as they are applicable, except so much of the 17th rule as restricts the speaking to more than twice. A call for the ayes and nays, and a motion to adjourn shall not be applicable, but a journal of the proceedings in committee of the whole shall be kept.

Rule 20. The order of business shall be as follows:

- 1st. Reports of committees.
- 2d. Motions, resolutions, and notices.
- 3d. Unfinished business.
- 4th. Special orders.

Rule 21. Upon a division and count of the convention on any question, no member without the bar shall be counted.

Rule 22. Every member who shall be in the convention when the question is put shall give his vote, unless the convention, for special reasons, shall excuse him.

Rule 23. A motion to adjourn is always in order.

On motion of Mr. Dolman,

Resolved, That the report of the committee on rules be received, and one hundred copies be ordered to be printed for the use of the members; which,

On motion of Mr. Boling,

Resolved, That the convention do now proceed to the election of a printer for the convention; adopted. Whereupon,

Mr. Boling nominated John D. Henderson.

Mr. Danforth nominated James Reid.

Mr. Blair nominated Thomas J. Key.

Mr. Jenkins moved that the election for public printer be postponed until to-morrow, 10 o'clock; carried.

On motion of Mr. Moore,

Resolved, That a committee consisting of — be appointed to draft a

constitution for the State of Kansas, and report the same to this convention on the — day of —, or as soon thereafter as possible; which was, on motion of Mr. Boling, laid on the table.

On motion of Mr. McKown,

Resolved, That the president of this convention be required, without delay, to appoint standing committees, of the number of five each, who shall, as ordered by said convention, report under the several heads following, to wit:

- | | |
|------------------------|-----------------------------|
| 1. State boundary. | 10. Religion. |
| 2. Bill of rights. | 11. Finance. |
| 3. Division of powers. | 12. Education. |
| 4. Legislative powers. | 13. Internal improvements. |
| 5. Executive powers. | 14. Slavery. |
| 6. The judiciary. | 15. Amendments |
| 7. Elections. | 16. An enumeration and call |
| 8. Militia. | for another convention. |
| 9. Inferior officers. | |

Mr. Heiskill moved to amend the above by adding another committee under the head of miscellaneous provisions.

Mr. Danforth then moved to lay the resolution, with the amendment, on the table; carried.

Mr. Vanderslice now moved that the report of the committee of rules be taken up adopted; carried.

Mr. Wells introduced the following certificate:

UNITED STATES OF AMERICA, }
Territory of Kansas. }

I, Frederick P. Stanton, secretary of the Territory of Kansas, do hereby certify that the returns of an election held in Franklin county, on the 15th June last, for delegate to the convention, show that William R. Judson received the highest number of votes. No census was taken in said county of Franklin, and it was not included in the apportionment.

Given under the seal of the Territory at LeCompton, this 9th day of September, 1857.

FRED. P. STANTON. [L. S.]

Mr. Wells then introduced the following resolution:

Resolved, That W. R. Judson, from Franklin county, be admitted to the privileges of the delegates from Franklin county. Whereupon,

Mr. Eastin moved that the resolution and certificate be referred to the committee on elections; which was agreed to.

On motion of Mr. Jones, of Douglas,

Resolved, That a committee of three be appointed to confer with the reporter of this convention as to the manner in which the business is to be performed and the rates of compensation, and report to the convention. Agreed to.

Whereupon the president appointed Messrs. Jones, of Douglas, Vanderslice, and Randolph, of Atchison, said committee.

On motion of Mr. McKown,

Resolved, That the rules regulating the legislation of the last Congress of the United States be, and are hereby, adopted as additional rules for the government of this body ; which, on motion of Mr. Little, was laid on the table.

Mr. Vanderslice moved that when this convention adjourn it adjourn to meet at 9 o'clock every morning.

On motion, the convention adjourned.

THURSDAY, September 10, 1857.

Convention assembled pursuant to adjournment.

Prayer, by the Rev. Mr. Magee.

The minutes of yesterday were read and approved.

On motion of Mr. Key,

Mr. Swift, a member elect of this convention, being present, was sworn.

The special order of the day was then called by the president.

Mr. Boling offered for adoption the following :

Resolved, That the rate of compensation for the printing of the proceedings of the convention shall be the same as that adopted by the last legislature.

Mr. Randolph then offered the following as an amendment :

Resolved, That when the constitution shall have been agreed upon and passed by the convention, the same shall be printed, ready for delivery, and distribution within five days from the day of the passage,

The question being taken on the amendment, it was rejected.

The resolution was then adopted.

Mr. Jenkins offered the following resolution :

Resolved, That the chair appoint a committee of five, to be called "the standing committee on printing," and that all the convention matter ordered to be printed be referred to that committee, at whose hands alone the public printer or printers shall receive instructions. That the chairman of said committee be required to approve of all accounts and demands for payment.

The committee to whom was referred the credentials from the county of Anderson beg leave to report as follows :

That it appears that there was no sheriff in the county, from the time of the passage of the census act, until the 10th day of April last, the time specified by law for making the return, and that there was a judge of the probate court, but from some cause this officer made no effort to take the census, and that after the expiration of the time prescribed by law, in the absence of the judge of the court of probate, Mr. McDaniel, a county commissioner, took the census and returned the same to the executive office, from which it appears that on the 15th day of March, 1857, there was in the county of Anderson 216 legal voters.

That your committee has lawfully examined the census act, and that we conceive that it was the intention of the legislature to designate that there should not be less than sixty delegates to this convention, but the maximum is nowhere specified.

The census in the county of Anderson shows that that county under the apportionment would have been entitled to two delegates to this convention, and that the election was held on the day specified by law, and under the supervision of judges and clerks in proper form, and is certified to by the judge of the probate court of that county, from which it appears that these applicants received the largest number of votes cast in that election.

In view of these facts, and the construction we placed on the law, we are of the opinion that D. R. Gilpatrick and J. Y. Campbell are entitled to seats in this convention as delegates from the county of Anderson, and the committee would respectfully recommend the adoption of the resolution accompanying this report.

RUSH ELMORE, *Chairman*,
C. DOLMAN,
L. S. BOLING,
L. J. EASTIN.

Resolved, That D. R. Gilpatrick and J. Y. Campbell are entitled to their seats in this convention as delegates for Anderson county.

On motion of Mr. McKown,

The report and resolution was made the special order of the day for to-morrow, 10 o'clock.

The election for public printer being the order of the day, was now taken up.

Mr. McKown nominated John D. Henderson.

Mr. Wells nominated W. S. Driggs.

Mr. Henderson received 28 votes.

Mr. Driggs received 16 votes.

Those who voted for Mr. Henderson are—Messrs. Adkins, Bryant, Connell, Calhoun, Dolman, Danforth, Eastin, Greenwood, Hascall, Hays, Hamilton, Jenkins, Jones, of Johnson, Jones, of Douglas, Kookagee, Kuykendall, Little, Moore, Martin, Mobley, McKown, Reynolds, Redman, Smith, Randolph, of Atchison, Swift, Stewart, of Douglas, Vanderslice—28.

Those who voted for Mr. Driggs are—Messrs. Blair, Bayne, Butcher, Barlow, Chiles, Elmore, Henderson, Heiskill, Key, Lykins, Mathews, Overstreet, Randolph, of Riley, Reid, Spicely, and Wells—16.

Mr. Henderson having received a majority of all the votes given, was, by the president, declared duly elected public printer to this convention.

On motion of Mr. Jenkins, leave of absence was granted to Mr. Wallace.

On motion of Mr. Henderson, leave of absence was granted to Mr. Doniphan.

Mr. Jones, chairman of the committee appointed to confer with the official reporter in reference to the most advisable mode of making the report of the debates and proceedings of the convention, and the most satisfactory terms of compensation for his services in his official capacity, respectfully reports the following resolutions, and recommends their adoption by the convention:

Resolved, 1st. That his report of the debates on questions of mere

form consist simply of a correct and intelligible abstract, and that on all questions relating to the constitution itself the report be *verbatim*.

2d. That five hundred copies of such report be printed by the public printer, at the territorial expense, for the use of the members of this convention, and other purposes, and that the reporter be directed to superintend the publication of the same.

3d. That the compensation to be paid the reporter be at the rate of five dollars (\$5) per printed page, according to the specimen herewith presented; that the president be authorized to give his certificate, on which the comptroller shall draw his warrant on the treasury for the reporter's bill, from time to time, and that after the aforesaid five hundred copies of the report shall have been printed, the reporter shall have the sole and exclusive copyright of the report.

All of which is respectfully submitted.

A. H. JONES,
D. VANDERSLICE,
J. W. RANDOLPH,
Committee.

On motion of Mr. Vanderslice, the report was received and adopted.

Mr. Little moved that the resolution introduced by Mr. Moore on yesterday be now taken up.

Mr. Little then moved an amendment, by adding committees instead of committee, and the last blank to be filled up.

On motion of Mr. Dolman, the following substitute was accepted and adopted:

Resolved, That the chair appoint a committee of five to report at three o'clock to-day what standing committees are necessary to prepare the business for the action of this constitutional convention.

Messrs. Dolman, Jenkins, Moore, Little, and Jones, of Johnson, were appointed said committee.

On motion of Mr. McKown, the convention adjourned to 2½ o'clock.

HALF-PAST 2 O'CLOCK.

Convention met pursuant to adjournment.

Mr. Dolman begs leave to report the following:

The committee to whom was referred the various heads of standing committees to prepare the business for the action of the convention makes the following report:

1st, Committee on executive department; 2d, committee on judiciary; 3d, committee on legislature; 4th, committee on slavery; 5th, committee on bill of rights; 6th, committee on incorporations; 7th, committee on revenue; 8th, committee on elections and rights of suffrage; 9th, committee on finance; 10th, committee on education; 11th, committee on internal improvements; 12th, committee on State boundaries, division into counties, and their organization; 13th, committee on miscellaneous matters.

All of which is most respectfully submitted.

C. DOLMAN, *Chairman.*

Mr. Reynolds moved that the report be received and adopted ; carried.

Mr. Jones, of Johnson, introduced the following :

Resolved, That each of the standing committees consist of five members.

Mr. Hascall moved that one hundred copies of the standing committees be printed, with rules.

Mr. Butcher moved that seven, instead of five, be inserted in the resolution ; lost.

Whereupon the above resolution was adopted.

On motion of Mr. Hascall,

Resolved, That this convention adjourn to-morrow, to meet again on the 18th day of October next, and that the several standing committees be allowed to the last mentioned time to report.

Mr. Butcher moved that the resolution be laid on the table.

The question was put, by division, and decided in the affirmative.

On motion of Mr. Key,

Resolved, That the standing committees be required to report to this convention on the first Monday of November next.

On motion of Mr. Blair,

The above resolution was laid on the table.

Mr. Vanderslice moved an adjournment until to-morrow, 10 o'clock ; lost.

On motion of Mr. Stewart, of Douglas,

The convention adjourned until to-morrow, 9 o'clock.

FRIDAY, *September 11*, 1857.

Convention assembled pursuant to an adjournment.

Prayer by the Rev. Mr. Magee.

The minutes of yesterday were read and approved.

The president announced the different standing committees, viz :

1st. *Executive*.—Messrs. Boling, Adkins, Lykins, Martin, and Randolph.

2d. *Judiciary*.—Messrs. Elmore, Jenkins, Doniphan, Boling, and Hascall.

3d. *Legislative*.—Messrs. Eastin, Jones, of Johnson, Blair, Reynolds, and Overstreet.

4th. *Slavery*.—Messrs. Moore, Vanderslice, Randolph, of Atchison, Danforth, and Wells.

5th. *Bill of Rights*.—Messrs. Little, Hereford, Reid, and Stewart, of Douglas.

6th. *Incorporations*.—Messrs. Vanderslice, Heiskill, Spicely, Walker, and Greenwood.

7th. *Revenue*.—Messrs. Jenkins, Redman, Smith, Wallace, and Oden.

8th. *Elections and Rights of Suffrage*.—Messrs. Jones, of Douglas, Todd, Wilson, Taylor, and Mathews.

9th. *Finance*.—Messrs. Doniphan, Hays, Connell, Butcher, and Bayne.

10th. *Education*.—Messrs. Danforth, Forman, Christerson, Chiles, and Lacey.

11th. *State Boundaries, &c.*—Messrs. Kuykendall, Kookagee, Bryant, Bradford, and Jones, of Johnson.

12th. *Internal Improvements.*—Messrs. Henderson, Dolman, Barlow, McKown, and Mobley.

13th. *Miscellaneous.*—Messrs. Hamilton, Stewart, of Jefferson, Eastin, Rively, and Davis.

14th. *Printing.*—Messrs. Dolman, Moore, McKown, Swift, and Jones, of Douglas.

Mr. Wilson, a member from Bourbon, appeared and was sworn.

The report of the committee on the Anderson county election being the order of the day, was announced by the chair and taken up.

Mr. Little moved to lay the report, with the resolution, on the table; withdrawn.

Mr. Henderson requested that the resolution be read.

Mr. Jones, of Johnson, moved to amend the above, as follows:

Resolved, That the consideration of said report by the convention be postponed until the day of meeting of the convention after an adjournment.

Whereupon,

On motion of Mr. Little, the whole was laid on the table, together with the resolution of Mr. Jones.

Mr. Danforth submitted the following minority report on the Anderson county election:

The undersigned, a minority of the committee to whom was referred the application of the delegates from Anderson county for seats in this convention, begs leave to have spread upon the minutes of this body the following:

While agreeing fully with the body of the report as to the facts of the case therein set forth, yet I cannot give my assent, as a member of this committee, to the conclusions at which a majority of that committee have arrived. After a full investigation of the law bearing upon the case, I am satisfied that R. Gilpatrick and J. Y. Campbell are not entitled to seats as members of this convention.

J. H. DANFORTH,
Of Johnson county.

Whereupon,

Mr. Elmore, in behalf of the delegation from Anderson county, begs leave to withdraw the certificate of election; granted.

Mr. Elmore begs leave to report, as chairman, on the election in Franklin county, and asks leave to be discharged from other business upon the subject.

Your committee beg leave to report the following:

1st. No census was taken in that county, and there is nothing upon which to form a conclusion with regard to population or voters in that county, whether they have a sufficient number to entitle them to a representation in the convention.

2d. The returns of the election show no poll-book, or when or how the election was held, and is merely the statement of the clerk of the county, not under seal, that an election was held at Chewning, in Franklin county, and Mr. ——— Judson, the highest, received a certain number of votes.

3d. There is no evidence that either the spirit or letter of the law was complied with ; and, although anxious that all the counties in which the citizens endeavored to comply with the requirements of the law should be represented in this convention, in order that as full an expression of the views of the people of the Territory might be had in the convention, yet, from the papers before us, we cannot see any evidence which would warrant us in reporting in favor of the applicant who presents the certificate from Franklin.

The committee beg leave to be discharged from the further consideration of the subject.

RUSH ELMORE, *Chairman*,
L. S. BOLING,
C. DOLMAN,
L. J. EASTIN,
J. H. DANFORTH.

Mr. Vanderslice moved an adjournment until the 1st Monday in November next.

Mr. Elmore called for the ayes and noes.

Those voting in the affirmative are—

Messrs. Blair, Barlow, Connell, Hereford, Heiskill, Key, Kookagee, Kuykendall, Little, Mathews, Martin, Mobley, Reynolds, Redman, Randolph, of Atchison, and Vanderslice—16.

Those voting in the negative are—

Messrs. Adkins, Bryant, Bayne, Boling, Butcher, Bradford, Christerson, Chiles, Calhoun, Dolman, Danforth, Eastin, Elmore, Greenwood, Hascall, Henderson, Hamilton, Jenkins, Jones, of Johnson, Jones, of Douglas, Lykins, Moore, McKown, Randolph, of Riley, Reid, Smith, Swift, Spicely, Stewart, of Douglas, and Wilson—30.

And the motion to adjourn to the 1st Monday in November was lost.

Mr. Little then moved that we adjourn until the third Monday in October next; lost.

On motion of Mr. Eastin,

Resolved, That all business pertaining to this convention be referred to the appropriate standing committees, and that the committees be required to report at as early a day as practicable.

On motion of Mr. Randolph, of Atchison,

The convention adjourned to 2½ o'clock.

HALF-PAST 2 O'CLOCK.

Convention met pursuant to adjournment.

On motion of Mr. McKown,

That when we adjourn this afternoon, we convene again at 10 o'clock in the morning of the third Monday of October next.

Ayes and noes being called for by Mr. Stewart, of Douglas,

Those voting in the affirmative are—Messrs. Adkins, Blair, Bryant, Boling, Butcher, Barlow, Christerson, Connell, Calhoun, Dolman, Eastin, Greenwood, Hereford, Hascall, Henderson, Heiskill, Hamilton, Key, Kookagee, Kuykendall, Lykins, Mathews, Martin, McKown,

Redman, Randolph, of Atchison, Smith, Randolph, of Riley, and Vanderslice—29.

Those voting in the negative are—Messrs. Bayne, Chiles, Danforth, Elmore, Jones, of Johnson, Jones, of Douglas, Little, Mobley, Reynolds, Reid, Swift, Spicely, Stewart, of Douglas, Wells, and Wilson—15.

The above resolution was adopted.

Mr. Key then moved that when this convention convenes again, it will convene at Leavenworth City.

Ayes and noes were called for.

Those voting in the affirmative are—Messrs. Hascall, Key, Lykins, McKown, and Redman—5.

Those voting in the negative are—Messrs. Adkins, Blair, Bryant, Bayne, Boling, Butcher, Barlow, Christerson, Connell, Calhoun, Dolman, Danforth, Eastin, Elmore, Greenwood, Hereford, Henderson, Heiskill, Hamilton, Jones, of Johnson, Jones, of Douglas, Kookagee, Kuykendall, Little, Mathews, Martin, Mobley, Overstreet, Randolph, of Riley, Reid, Randolph, of Atchison, Smith, Spicely, Stewart, of Douglas, Vanderslice, Wells, and Wilson—37.

And so the above resolution was lost.

Mr. Eastin moved that one hundred printed copies of the names of the members be printed for the use of the members of this convention.

On motion of Mr. Heiskill,

The convention adjourned, to meet at Lecompton on the third Monday in October.

LECOMPTON, *Monday, October 19, 1857.*

Convention assembled pursuant to adjournment.

No quorum being present, convention adjourned until to-morrow morning, at 10 o'clock.

LECOMPTON, *Tuesday, October 20, 1857.*

Convention met pursuant to adjournment.

No quorum being present, convention adjourned until to-morrow morning, at 10 o'clock.

LECOMPTON, *Wednesday, October 21, 1857.*

Convention met pursuant to adjournment.

No quorum being present, convention adjourned until to-morrow morning, at 10 o'clock.

Messrs. H. D. Oden, delegate from Calhoun; W. Walker, delegate from Leavenworth, and F. H. Stewart, a delegate from Jefferson, appeared, and were sworn as members of the constitutional convention.

LECOMPTON, *Thursday, October 22, 1857.*

Convention met pursuant to adjournment.

Prayer by the Rev. Mr. Magee.

On motion of Mr. Boling, it was unanimously

Resolved, That in view of the fact that the secretary and assistant secretary elect of the convention have neglected their duty, and have absented themselves from their post, this convention now proceed to the election of a secretary and assistant secretary.

On motion of Mr. Stewart, of Douglas,

A call of the convention was ordered, to determine whether a quorum of its members were present. After a partial proceeding under the call,

On motion of Mr. Boling, further proceedings under the call were dispensed with.

Mr. Jenkins offered, for adoption, the following :

Resolved, That all questions of order and government arising in convention, not specially provided for by the rules, be determined by the usual parliamentary code established by the Jefferson Manual.

Before the vote was taken,

On motion of Mr. Kuykendall,

The convention adjourned until 2 o'clock this afternoon.

TWO O'CLOCK P. M.

Convention met pursuant to adjournment.

Mr. Jenkins' resolution was again brought up for the consideration of the convention. Whereupon he withdrew it.

The secretary read the resignation of Mr. Wallace, of Douglas. Whereupon,

On motion of Mr. Jones, of Johnson,

Resolved, That the resignation of Mr. Wallace be accepted.

On motion of Mr. Boling,

Resolved, That this convention now expresses its unqualified disapproval and censure of the negligence and failure to attend of those delegates to the constitutional convention who are now absent.

On motion of Mr. Boling, his resolution of this morning, relative to the secretaries, was called up and passed unanimously ; and

Mr. Charles J. McIlvaine was elected secretary, and Mr. G. D. Hand was elected assistant secretary, by acclamation.

On motion of Mr. Jones, of Johnson,

Resolved, That Mr. Lacey, of Atchison, be excused for his absence at the time of the passage of the resolution censuring and condemning the absentees, up to to-day, on account of sickness.

The report of the committee on the bill of rights was presented by Mr. Little, of Bourbon, and read by the secretary ; and it was, on motion, laid on the table, and made the special order for seven o'clock this evening.

On motion of Mr. Jones, of Douglas, the resolution was amended, and the report made the special order for ten o'clock to-morrow morning.

The chairman of the committee on education read his report, and moved that it be made the special order for 7½ o'clock. Whereupon,

Mr. Elmore proposed to amend the resolution by striking out "for 7½ o'clock," and inserting for 10½ o'clock to-morrow morning. When,

The chairman of the committee asked and obtained leave to withdraw the report.

On motion of Mr. Danforth,

The convention adjourned until to-morrow morning at nine o'clock.

LECOMPTON, *October 23, 1857.*

The convention met pursuant to adjournment.

The minutes of yesterday were read and approved.

On motion of Mr. Jenkins, it was

Resolved, That a committee on militia, to consist of five members, be added to the list of standing committees; and that they be required to report as early as possible; and

The president appointed the following members as the committee: Messrs. Hascall, Wilson, Todd, Oden, and Taylor.

Mr. Jarret Todd appeared and was sworn in.

Mr. John Frawley was elected doorkeeper.

On motion, it was

Resolved, That the censure, so far as it relates to Messrs. Todd, Moore, and Hascall, be removed.

The report of the committee on the executive was presented and read by Mr. Boling; when,

On motion by Mr. Jenkins, it was

Resolved, That the report be made the special order of the day for to-morrow morning.

The bill of rights was introduced by Mr. Little, the chairman of the committee, and read by the secretary.

On motion, the report was read by sections.

The first five sections were read and adopted.

The sixth section was read and adopted.

The seventh, eighth, ninth, and tenth sections were adopted.

Mr. Moore moved to amend the eleventh section by inserting after the word "limb" the words "or liberty."

The amendment was adopted, and the section as amended was passed.

The twelfth section was read and adopted.

The thirteenth section was adopted with the amendments offered by Messrs. Boling and Elmore.

The fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth sections were read and adopted.

The twentieth section was adopted, with the amendment of Mr. Boling, and the insertion of the word "citizens" in the place of the words "free white men."

The twenty-first, twenty-second, and twenty-third sections were adopted.

The twenty-fourth section was read; when,

Mr. Stewart, of Douglas, moved that the clause be stricken out.

On motion of Mr. Boling, the convention adjourned until half-past 2 o'clock this afternoon.

HALF-PAST 2 O'CLOCK P. M.

The convention met pursuant to adjournment.

The twenty-fourth section of the report of the committee on the bill of rights was again brought up for the consideration of the convention; when

A motion was made that it be referred to the committee on slavery, which was lost; whereupon

A call of the convention was ordered, and it appeared that there were only thirty members present—not a quorum.

Mr. Butcher moved that leave of absence be granted to Mr. Mobley; which was refused.

On motion of Mr. Little, Mr. Greenwood was excused from attendance, and the sergeant-at-arms was sent for Messrs. Kookagee, Mobley, Swift, and Randolph.

The twenty-fourth section was then passed by a vote of 18 ayes and 14 noes.

The twenty-fifth section was then read and concurred in.

On motion of Mr. Little, of the committee on the bill of rights, the report of that committee was laid on the table, and made the special order of the day for to-morrow morning, at 10 o'clock.

Mr. Jones, of Douglas, chairman of the committee on elections, presented his report; which was read, laid on the table, and made the special order of the day for to-morrow morning, at 10 o'clock.

Messrs. McKown and Dolman, of the committee on internal improvements, made their report; which was laid on the table until to-morrow morning, at 11 o'clock.

Mr. Jones, of Johnson, presented the report of the committee on the legislative department; which was laid on the table, and was made the special order of the day for to-morrow morning, at 10 o'clock; whereupon

The convention adjourned until to-morrow morning, at 9 o'clock.

LECOMPTON, *October 24, 1857.*

The convention met pursuant to adjournment—the president in the chair.

The Rev. Mr. Magee opened the proceedings with prayer.

Mr. Monunan's excuse was read, accepted, and filed.

On motion of Mr. Danforth,

Resolved, That this convention now proceed to the election of an enrolling and engrossing clerk.

Mr. Danforth nominated Mr. E. L. Yates.

Mr. Bowling nominated Mr. H. M. McMullen.

Mr. Wells nominated Mr. Hugh Cameron, and withdrew the nomination.

A vote was called, and Mr. Yates received thirteen votes, and Mr. McMullen seventeen votes; and the president declared that no quorum being present, there was no election.

A member came in, and it was moved that the convention proceed to take another vote.

On motion of Mr. Danforth, that the resolution be laid on the table,

it appeared that there were 10 ayes and 18 noes ; there being no quorum present, the question was put again, when 10 ayes and 19 noes were given.

There being no quorum present yet, a call of the house was had, when it appeared that there were thirty-one members present.

A member left the hall, and the sergeant-at-arms was sent after the absent members.

It was moved to proceed with the election of an enrolling clerk.

Mr. Danforth moved to postpone the election until 3 o'clock this afternoon ; and his motion was lost by a vote of 14 ayes to 17 noes.

The question as to going into an election immediately was then put by the president.

Mr. Danforth moved that the election be postponed, and that the special order of the day be taken up.

The president declared that the motion prevailed.

A division was called for, and the vote appeared to be 16 in favor of and 12 opposed to the resolution.

There being no quorum present, the vote was again taken, when there were 17 in favor of and 15 opposed to it.

And the order of the day, the bill of rights, was taken up.

Mr. Elmore's amendment, of which he gave notice yesterday, was brought up, and he moved a reconsideration of the vote on the thirteenth section of the bill of rights.

The president declared the amendment carried. A division was called for, and there were 23 ayes and 9 noes.

Mr. Elmore moved that the thirteenth section be amended, so as to read as follows :

"No person shall be held to answer a capital or otherwise infamous crime unless on the presentment or indictment of a grand jury; or by impeachment, except in cases of rebellion, insurrection, or invasion."

Mr. Boling moved to amend the section by adding the words, "except in the case of slaves."

Mr. Swift moved to lay Mr. Boling's amendment on the table.

And the amendment was laid on the table.

The question was called on Mr. Elmore's substitute.

On a call of the roll, there was no quorum present.

Upon a second call of the roll, a quorum was found present.

Mr. Elmore's substitute was again read and carried.

A reading of the bill of rights was called for, and the same was read by the secretary.

On motion of Mr. Stewart, of Douglas, that the twenty-fourth section be reconsidered,

The question was put by the president, and declared lost.

On motion of Mr. Hamilton,

The report of the committee on the bill of rights was concurred in.

Mr. Danforth moved a reconsideration of the vote.

Mr. Jenkins moved that the motion of Mr. Danforth be laid on the table ; which was carried.

Mr. Spicely moved an adjournment until 3 o'clock p. m. ; and the motion was withdrawn.

On motion of Mr. Jones, of Johnson,

Mr. Kuykendall was excused for non-attendance to-day.

On motion of Mr. Read, it was

Resolved, That a committee of three be appointed to revise from day to day the reports of the standing committees, and that said committee be required to report its proceedings each day until a constitution shall be adopted.

And the convention adjourned until 2 o'clock p. m.

TWO O'CLOCK P. M.

The convention met pursuant to adjournment.

Mr. Danforth offered the following resolution :

Resolved, That this convention now proceed to the election of an enrolling and engrossing clerk.

Mr. Jenkins moved that the convention proceed with the order of the day ; and the motion was carried.

On motion of Mr. Little,

The special order of the day was suspended, and the election of an enrolling and engrossing clerk was entered upon ; whereupon,

Mr. Yates received eighteen votes, and Mr. McMullen received thirteen votes ; and the president declared Mr. Yates elected.

The secretary, assistant secretary, reading and enrolling clerks were then sworn in.

Mr. Little offered a resolution, that all absentees shall pay to the sergeant-at-arms one dollar when sent by the convention after them.

Mr. Danforth moved to amend the resolution by inserting the words "two dollars" instead of the words "one dollar," and the amendment was lost.

Mr. Hamilton moved to amend the resolution of Mr. Little by inserting the words "ten dollars" instead of the words "one dollar."

The previous question was called, and the resolution of Mr. Little was carried.

On motion of Mr. Jenkins, it was

Resolved, That a committee on enrolled acts, to consist of five members, be added to the list of standing committees of the convention, and the president appointed the following committee :

Messrs. Reid, Little, Spicely, McKown, and Henderson.

Mr. Jones, of Douglas, asked leave to withdraw the report of the committee on elections.

On motion of Mr. Moore,

The report was taken up and referred back to the committee.

On motion of Mr. Elmore,

The report of the committee on the executive department, was taken from the table and read section by section by the secretary.

The first section was read and concurred in.

The second section was read and concurred in.

The third section was read.

Mr. Elmore moved to strike out all of the third section after the word "governor," to the words "shall have resided," inclusive.

Mr. Danforth moved to lay Mr. Elmore's amendment on the table.

On motion of Mr. Elmore, a division was called, and the house refused to lay the amendment on the table by ayes 15, noes 16.

Mr. Moore offered the following amendment to the third section: "And shall be at least twenty-five years of age;" when, on motion of Mr. Elmore, the convention adjourned until Monday morning, 9 o'clock.

LECOMPTON, *October 26, 1857.*

The convention met pursuant to adjournment.

The roll was called, and only twenty-eight members found present; no quorum.

On motion of Mr. Randolph, of Riley, the sergeant-at-arms was sent after the absent members.

Mr. Elmore, one of the absentees, appeared, and excused himself on account of business.

On motion of Mr. Little, the excuse of Mr. Elmore was received.

The secretary read the minutes.

Mr. Elmore's substitute was ordered to be inserted therein, which was as follows: "The governor shall be a citizen of the United States."

Mr. Wells moved to reconsider the twenty-fourth section—not having voted in the affirmative, Mr. Stuart, of Douglas, made the motion.

On motion of Mr. Jones, of Johnson,

Resolved, That the enrolling committee be ordered to correct the journals up to this morning, and that the journals, so corrected, be reported to the convention to-morrow morning.

Mr. Jones, of Johnson, presented the report of the committee on the State boundaries; which was made the special order of the day for to-morrow, 10 o'clock a. m.

Mr. Jones, of Douglas, presented the report of the committee of elections; which was made the special order of the day for to-morrow, 11 o'clock a. m.

Mr. Spicely presented the report of the committee on corporations; which was made the special order of the day for to-morrow, 10½ o'clock a. m.

Mr. Jones, of Johnson, offered a resolution declaring the office of reporter of the convention vacant; which resolution he withdrew.

Whereupon,

The order of the day was taken up.

Mr. Jenkins moved that Mr. Elmore's substitute be laid on the table.

The ayes and nays were called, with the following result:

Ayes—Messrs. Adkins, Boling, Butcher, Dolman, Danforth, Greenwood, Henderson, Jenkins, Jones, of Johnson, Jones, of Douglas, Little, McKown, Randolph, of Atchison, Randolph, of Riley, Stewart, of Douglas, and Mr. President—18.

Nays—Messrs. Elmore, Hereford, Hascall, Hamilton, Moore, Oden, Redman, Reid, Spicely, Todd, and Walker—11.

No quorum present.

On motion of Mr. Randolph, of Riley, a call of the house was made; and, it appearing that there were but twenty-nine members present,

Mr. Randolph, of Riley, moved an adjournment until 2 o'clock p. m.; which motion was lost.

The motion to lay Mr. Elmore's substitute on the table was renewed.

The ayes and nays were called with the following result :

Ayes—Messrs. Adkins, Bayne, Boling, Butcher, Dolman, Danforth, Greenwood, Henderson, Jenkins, Jones, of Johnson, Jones, of Douglas, Little, McKown, Randolph, of Atchison, Randolph, of Riley, Stewart, of Douglas, Wells, Wilson, and Mr. President—19.

Nays—Messrs. Elmore, Hereford, Hascall, Hamilton, Moore, Oden, Redman, Reid, Spicely, Todd, and Walker—11.

There being no quorum present, the convention adjourned until 2 o'clock p. m.

TWO O'CLOCK P. M.

The convention met pursuant to adjournment.

On motion of Mr. Danforth, a call of the house was made ; when, The following members answered to their names :

Messrs. Adkins, Boling, Butcher, Dolman, Danforth, Greenwood, Hereford, Hascall, Henderson, Hamilton, Jenkins, Jones, of Johnson, Jones, of Douglas, Little, Moore, McKown, Oden, Redman, Randolph, of Atchison, Randolph, of Riley, Reid, Spicely, Stewart, of Douglas, Todd, Walker, Wells, Wilson, and Mr. President—28.

The sergeant-at-arms was sent after absent members.

On motion to lay on the table Mr. Elmore's amendment to the third section of the report of the committee on the executive,

The ayes and nays were demanded, with the following result :

Ayes—Messrs. Adkins, Bayne, Boling, Butcher, Chiles, Dolman, Danforth, Greenwood, Henderson, Jenkins, Jones, of Johnson, Jones, of Douglas, Little, McKown, Randolph, of Atchison, Randolph, of Riley, Stewart, of Douglas, Wells, Wilson, and Mr. President—20.

Nays—Messrs. Elmore, Hereford, Hascall, Hamilton, Moore, Oden, Redman, Reid, Swift, Spicely, Todd, and Walker—12.

Mr. Jones, of Douglas, moved to amend the third section, by inserting the words "shall be a citizen of the United States," after the word "age;" and striking out the words "shall have been a citizen of the United States for twenty years."

A motion was made to lay the amendment on the table.

Whereupon,

The ayes and nays were demanded, with the following result :

Ayes—Messrs. Adkins, Bayne, Boling, Butcher, Chiles, Dolman, Danforth, Greenwood, Jenkins, Jones, of Johnson, Little, McKown, Randolph, of Riley, Randolph, of Atchison, Stewart, of Douglas, Wilson, and Mr. President—17.

Nays—Messrs. Elmore, Hereford, Hascall, Henderson, Hamilton, Jones, of Douglas, Moore, Oden, Redman, Reid, Swift, Spicely, Todd, Walker, and Wells—15.

Mr. Stewart, of Douglas, moved the previous question on the adoption of the third section of the report of the committee ; and the section was concurred in by the following vote :

Ayes—Messrs. Adkins, Bayne, Boling, Butcher, Chiles, Dolman, Danforth, Greenwood, Jenkins, Jones, of Johnson, Little, McKown,

Randolph, of Atchison, Randolph, of Riley, Stewart, of Douglas Walker, Wells, Wilson, and Mr. President—19.

NOES—Messrs. Elmore, Hereford, Hascall, Henderson, Hamilton, Jones, of Douglas, Moore, Oden, Redman, Reid, Swift, Spicely, and Todd—13.

The fourth section of the report of the committee was read and concurred in.

The fifth section was read ; whereupon

Mr. Hascall moved to amend by striking out the word "in" after the word "navy," and inserting in lieu thereof the word "of;" which motion was lost.

The fifth section was then concurred in.

The sixth section of the report was read and concurred in.

The seventh section was read and concurred in.

The eighth section was read and concurred in.

The ninth section was read and concurred in.

The tenth section was read.

Mr. Stewart, of Douglas, moved to strike out the words "to remit fines;" which was lost.

The tenth section was then concurred in.

The eleventh section was read and concurred in.

The twelfth section was read and concurred in.

The thirteenth section was read and concurred in.

The fourteenth section was read.

Mr. Chiles moved to amend by inserting after the words "electors of the State" the words "shall have been a citizen of the United States twenty years."

Mr. Randolph, of Atchison, moved to lay the amendment on the table ; upon which the ayes and noes were demanded, with the following result:

AYES—Messrs. Adkins, Butcher, Dolman, Danforth, Elmore, Greenwood, Hereford, Hascall, Henderson, Hamilton, Jenkins, Jones, of Johnson, Jones, of Douglas, Little, Moore, McKown, Redman, Randolph, of Riley, Reid, Spicely, Todd, Walker, Wells, and Wilson—24.

NOES—Messrs. Bayne, Boling, Chiles, Randolph, of Atchison, Swift, Stewart, of Douglas, and Mr. President—7.

The fourteenth section was then concurred in.

The fifteenth section was then read.

Mr. Reid moved to amend by inserting the words "two-thirds of the members present;" which amendment was adopted.

Mr. McKown moved to amend by adding the words "and it shall become a law;" which amendment was adopted.

Mr. Elmore moved to strike out the word "majority."

Mr. Wells moved the previous question.

The amendment was adopted.

Section fifteenth, as amended, was concurred in.

Mr. Moore gave notice that he would move a reconsideration of the vote on the 15th section.

Section sixteenth was read and concurred in.

Section seventeenth was read ; whereupon,

Mr. Randolph, of Atchison, moved to strike out the entire section ; which was lost.

Mr. Jenkins moved the previous question ; whereupon,

The seventeenth section was concurred in.

Mr. Elmore called for the ayes and noes.

Those voting aye are—Messrs. Adkins, Boling, Butcher, Chiles, Dolman, Danforth, Greenwood, Jenkins, Jones, of Johnson, Little, McKown, Randolph, of Riley, Swift, Stewart, of Douglas, Walker, Wilson, and Mr. President—17.

Those voting no are—Messrs. Bayne, Elmore, Hereford, Hascall, Henderson, Hamilton, Jones, of Douglas, Moore, Redman, Randolph, of Atchison, Reid, Spicely, Todd, and Wells—14.

Mr. Danforth gave notice that on to-morrow he would move a reconsideration of the vote on the seventeenth section.

The eighteenth section was read and concurred in.

The nineteenth section was read and concurred in.

The twentieth section was read.

Mr. Elmore moved to lay the section on the table ; which motion was lost ; whereupon,

Mr. Elmore moved to strike out the word "ranger;" which motion prevailed.

The twentieth section, as amended, was then concurred in.

The twenty-first section was read and concurred in.

Mr. Elmore asked leave to present the majority report of the committee on the judiciary.

Leave was granted, and the report was read by the secretary.

Mr. Jenkins presented the minority report of the same committee ; which was read by the secretary.

On motion of Mr. Elmore, the majority and minority reports of the committee on the judiciary were made the special order of the day for to-morrow, at 10 o'clock a. m.

Mr. Moore offered the following resolution :

Resolved, That a committee, consisting of five members, be appointed by the chair, to be added to the list of the regular standing committees, and styled "the committee on schedule."

Which resolution was adopted.

On motion of Mr. Henderson, the convention adjourned until to-morrow morning, at 9 o'clock.

LECOMPTON, *October 27, 1857.*

The convention met pursuant to adjournment.

Mr. Hamilton moved a call of the house.

The call was made, and the following members answered to their names :

Messrs. Adkins, Bryant, Butcher, Dolman, Danforth, Eastin, Elmore, Greenwood, Hereford, Hascall, Henderson, Hamilton, Jenkins, Jones, of Johnson, Jones, of Douglas, Little, Mathews, Moore, McKown, Reynolds, Redman, Randolph, of Atchison, Randolph, of Riley, Reid, Smith, Spicely, Stewart, of Douglas, Todd, Walker, Wells, Wilson, and Mr. President—32.

Thirty-two members appearing present, further proceedings under the call were dispensed with.

The minutes of yesterday's proceedings were read, corrected, and approved.

Mr. Chiles was excused by the convention for non-attendance during the past week.

On motion of Mr. Danforth, it was

Resolved, That an additional assistant secretary to this convention be now elected.

Mr. Danforth nominated Mr. J. C. Thompson.

Mr. Elmore nominated Mr. Hugh Cameron, and withdrew his nomination.

Mr. Stewart, of Douglas, nominated Mr. E. S. Bishop.

The convention then proceeded to an election, which resulted as follows:

For Mr. Thompson: Messrs. Adkins, Bryant, Boling, Butcher, Chiles, Danforth, Eastin, Greenwood, Hersford, Hascall, Henderson, Hamilton, Jenkins, Jones, of Johnson, Jones, of Douglas, Little, Mathews, Moore, McKown, Oden, Redman, Randolph, of Atchison, Randolph, of Riley, Smith, Spicely, Todd, Walker, Wilson, and Mr. President—29.

For Mr. Bishop: Messrs. Bayne, Dolman, Elmore, Reynolds, Reid, Stewart, of Douglas, and Wells—7.

The president declared Mr. Thompson duly elected; whereupon, he appeared, and was sworn in by the clerk of the supreme court.

The resignation of Mr. Thomas C. Hughes of his office as secretary of the constitutional convention was read, accepted, and ordered to be put upon the journal, and it was so put, as follows:

“LEAVENWORTH CITY, October 24, 1857.

“SIR: I desire, through you, to tender to the members of the convention my resignation as secretary of the convention. I do so because of sickness. I am at this time confined to my bed. I offer to the convention my sincere thanks for the flattering vote I received in being selected as its secretary. Nothing but sickness would induce me now to resign a position I so highly prize.

“Very respectfully,

“THOS. C. HUGHES.

“To the PRESIDENT of the Constitutional Convention.”

On motion of Mr. Jones, of Douglas, it was

Resolved, That the report of the committee on internal improvements be now taken up.

And, on motion of Mr. Jones, of Douglas, the report of the committee on internal improvements was recommitted.

Mr. Jenkins offered the following:

Resolved, That the committee on slavery be requested to report forthwith;

And withdrew his resolution.

Mr. Danforth moved a reconsideration of the vote on the seventeenth.

section of the report of the committee on the executive, and demanded the previous question.

A division was called for, and the motion was lost by ayes 15, noes 17.

Mr. Moore moved that the vote taken yesterday on the fifteenth section of the report of the committee on the executive be reconsidered.

A division was called for, and the motion prevailed by ayes 17, noes 16; whereupon

Mr. Moore moved the following as a substitute for the fifteenth section of the report of the committee:

"Sec. 15. Every bill which shall have passed both houses of the legislature shall be presented to the governor. If he approve he shall sign it; but if not he shall return it, with his objections, to the house in which it shall have originated, which shall enter the objections at large upon the journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of the house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered. If approved by two-thirds of that house it shall become a law. But in such case the votes of each house shall be determined by ayes and noes, and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return; in which case it shall not become a law."

Mr. Dolman moved to amend the substitute by striking out the word "six" and inserting in lieu thereof the word "three";

And the motion was lost.

A division of the house on the substitute offered by Mr. Moore was called for, and the substitute was adopted by ayes 21, noes 10.

Mr. Boling moved to reconsider the vote taken yesterday on the fifth section of the report of the committee on the executive.

Mr. Danforth moved to lay Mr. Boling's motion on the table, and called for a division; whereupon Mr. Danforth's motion was lost by ayes 14, noes 19.

The fifth section was then reconsidered.

On motion of Mr. Boling, it was

Resolved, That the fifth section be amended by striking out the word "in" and inserting in lieu thereof the word "of."

And the fifth section as amended was concurred in.

Mr. Randolph, of Atchison, moved that the report of the committee on the executive, as amended, be taken up; which motion prevailed.

Whereupon Mr. Randolph, of Atchison, moved that the report of the committee on the executive, as amended, be concurred in.

Upon which motion Mr. Hamilton demanded the previous question; which was carried.

Whereupon the report of the committee on the executive, as amended, was concurred in.

On motion of Mr. Jenkins, the report of the committee on the legislative department was taken up.

Whereupon Mr. Little moved that the report be recommitted to the committee.

Mr. Randolph, of Atchison, moved the previous question.

A division was demanded, and the motion prevailed by ayes 18, noes 13.

The report of the committee on incorporation was taken up.

Mr. Hamilton moved to recommit the report to the committee; which was lost.

The report was then read by the clerk, when,

On motion of Mr. Hereford, the convention adjourned until 2 o'clock p. m.

TWO O'CLOCK P. M.

The convention met pursuant to adjournment.

Mr. Vanderslice reported his colleague, Mr. Floreman, as being present, who came forward and was sworn in.

The report of the committee on corporation being under consideration, Mr. Vanderslice moved that it be recommitted.

Mr. Danforth moved to lay the motion to recommit on the table.

A division being called for, and the motion was lost by a vote of ayes 15, noes 18.

The question recurring on the motion of Mr. Vanderslice to recommit, a division was called, and the motion prevailed.

Mr. Hascall presented the report of the committee on the militia.

Mr. Randolph, of Atchison, moved to recommit the report; when, on motion of Mr. Reid, the motion to recommit was laid on the table.

The first section of the report was then read by the secretary; whereupon

Mr. Randolph, of Atchison, moved to amend by striking out the words "eighteen" and "forty-five," and inserting in lieu thereof the words "twenty" and "forty."

Mr. Jenkins moved the previous question; and the amendment was rejected.

The first section of the report was then concurred in.

The second section was then read; whereupon

Mr. Danforth moved that the second section of the report of the committee on militia be stricken out.

Mr. Jenkins moved the previous question, which was ordered by the house; and

The amendment was lost by a vote of ayes 11, noes 23.

The previous question was then moved and ordered by the house on the adoption of the second section.

Mr. Boling moved to amend by inserting after the word "pay" the word "such," and after the word "services" the words "as may be prescribed by law;" which amendment was adopted.

The second section, as amended, was then concurred in by the following vote:

AYES—Messrs. Adkins, Bryant, Bayne, Boling, Butcher, Chiles,

Dolman, Elmore, Foreman, Hereford, Hascall, Henderson, Jones, of Johnson, Kuykendall, Little, Mathews, McKown, Reynolds, Randolph, of Riley, Redman, Spicely, Todd, Vanderslice, Walker, Wells, and Mr. President—27.

NOES—Messrs. Danforth, Eastin, Greenwood, Hamilton, Jenkins, Jones, of Douglas, Moore, Oden, Randolph, of Atchison, Reid, Smith, and Stewart, of Douglas—12.

The third section was read and concurred in.

Mr. Danforth offered the following resolution :

Resolved, That this convention now adjourn *sine die*.

On motion of Mr. Jones, of Johnson, the resolution to adjourn *sine die* was laid on the table.

Mr. Boling moved the adoption of the report of the committee on the militia as a whole.

Upon which motion, the previous question was ordered by a vote of ayes 19, noes 12 ; and

The ayes and noes being called for, the report of the committee was concurred in by the following vote :

AYES—Messrs. Adkins, Blair, Bryant, Bayne, Boling, Butcher, Chiles, Dolman, Elmore, Foreman, Greenwood, Hereford, Jenkins, Key, Kuykendall, Little, Mathews, Moore, McKown, Reynolds, Redman, Randolph, of Riley, Spicely, Todd, Vanderslice, Walker, Wells, Wilson, and Mr. President—30.

NOES—Messrs. Eastin, Hamilton, Jones, of Johnson, Jones, of Douglas, Oden, Randolph, of Atchison, Reid, Smith, and Stewart, of Douglas—9.

The report of the committee on boundaries was taken up and read.

Mr. Jones, of Douglas, moved to amend the preamble by striking out the words "State of Kansas," and inserting in lieu thereof the words "State of Washington."

Mr. Hamilton moved to amend the amendment by striking out the word "Washington," and inserting in lieu thereof the word "Walker ;" when,

On motion of Mr. Little, both of the amendments were laid on the table.

Mr. Elmore moved to amend the preamble by inserting in it the word "sovereign" between the words "independent" and "State ;" which was carried.

The preamble, as amended, was then concurred in.

The first section of the report was then read ; when,

On motion of Mr. Little, further consideration of the first section was dispensed with.

On motion of Mr. Danforth, the report under consideration was recommitted.

Mr. Stewart, of Douglas, moved that the convention adjourn.

Mr. Reid moved that the convention adjourn until 7 o'clock this evening.

Mr. Danforth moved that the convention adjourn until Tuesday next at 9 o'clock a. m. ; whereupon,

On motion of Mr. Reid, all the motions to adjourn were laid on the table.

Mr. Eastin offered the following resolution :

Resolved, That the office of reporter to this convention be declared vacant, and that the printer to this convention be empowered to procure the services of a reporter ; and that he receive the same remuneration as that allowed the first reporter.

Mr. Hamilton moved to lay the resolution on the table ; which motion was lost by the following vote :

AYES—Messrs. Adkins, Blair, Bryant, Boling, Danforth, Foreman, Greenwood, Hamilton, Jenkins, Jones, of Johnson, Kuykendall, Little, Mathews, McKown, Reynolds, Redman, Reid, Smith, Walker, and Wilson—20.

NOES—Messrs. Bayne, Butcher, Chiles, Dolman, Eastin, Hereford, Hascall, Henderson, Jones, of Douglas, Elmore, Key, Moore, Oden, Randolph, of Atchison, Randolph, of Riley, Spicely, Stewart, of Douglas, Todd, Vanderslice, Wells, and Mr. President—21.

Mr. Hamilton moved the previous question ; which was lost by a vote of ayes 8, noes 22.

Mr. Little moved that the further consideration of the resolution be deferred until two weeks from next Tuesday ; whereupon

The previous question was called, and the house refused to sustain the call by a vote of ayes 17, noes 22.

The question recurring on the motion of Mr. Little to defer further consideration of the resolution until two weeks from next Tuesday, it was decided in the negative.

Mr. Key offered the following as a substitute to the resolution offered by Mr. Eastin :

Resolved, That the office of reporter be declared vacant, and the convention do now proceed to fill the said vacancy.

Mr. Hamilton offered the following as a substitute for the resolution and substitute now before the house :

Resolved, That the office of reporter be declared vacant, and that Mr. Daniel Scully be declared unanimously elected reporter to this convention."

Upon which Mr. Hamilton moved the previous question, which was ordered by the convention.

And the substitute was adopted by the following vote :

Ayes 26, noes 8.

On motion of Mr. Elmore,

The convention adjourned until to-morrow morning at 9 o'clock.

LECOMPTON, *October 28, 1857.*

The convention met pursuant to adjournment.

Prayer by the Rev. Mr. Magee.

The journal of yesterday was read and approved.

Under the resolution of Mr. Moore, providing for the appointment of a committee "consisting of five members to be added to the list of the regular standing committees, and styled the committee on schedule," the chair appointed the following :

Messrs. Moore, Hereford, Little, Vanderslice, and Riley, of Riley.

Mr. Vanderslice offered an excuse to the convention for his absence ;
when

Mr. Danforth moved that Mr. Vanderslice be excused ;

Which was agreed to.

On motion,

The report of the committee on the judiciary was taken up.

Mr. McKown moved that the report of the judiciary be considered
as a whole ;

Which motion was afterwards withdrawn.

The first section was then read by the clerk.

Mr. Boling moved to amend by striking out the words "chapter
first," which proceeds the words "section first ;"

Which motion was carried.

Mr. Moore moved to amend by striking out the words "chancery
courts" in the first section ; when

A division was called for, and the motion was lost by a vote of ayes
20, noes 21.

The first section was then concurred in.

The second section was read and concurred in.

The third section was read ; when

Mr. Boling moved to amend by striking out the words "general
assembly," and inserting in lieu thereof the word "legislature ;"

Which motion prevailed.

The section, as amended, was then concurred in.

The fourth section was read ; when

Mr. Little moved to substitute for the fourth section the following :
"The supreme court shall consist of the judges of the circuit court
until otherwise directed by the legislature."

Upon which motion the previous question ordered, and the substi-
tute was lost.

The fourth section was then concurred in.

The fifth section was read ; when,

On motion of Mr. Boling, it was amended by striking out the words
"general assembly," and inserting the word "legislature."

The fifth section, as amended, was then concurred in.

The sixth section was read and concurred in.

The seventh section was read and concurred in.

The eighth section was read ; and,

On motion of Mr. Elmore, it was amended by inserting after the
word "times" the words "and places."

The section, as amended, was then concurred in.

The ninth section was read ; when

Mr. Boling moved to amend by striking out the words "general
assembly shall," and inserting in lieu thereof the words "legislature
may ;" which amendment prevailed ; and

The section, as amended, was then concurred in.

The tenth section was read ; and,

On motion, the report was generally amended so as to read "legis-
lature" wherever the words "general assembly" occur.

The tenth section was then concurred in.

The eleventh section was read.

Mr. Wells moved to amend by striking out after the word "amount" the words "does not exceed one hundred dollars," and inserting in lieu thereof the words "due by account does not exceed fifty dollars, and on all debts due by note where the amount does not exceed three hundred dollars ;"

Which amendment was lost.

The eleventh section was then concurred in.

The twelfth section was read ;

Whereupon Mr. Jones, of Douglas, moved to amend by inserting after the word "diminished" the words "or increased ;"

Which amendment was lost.

On motion of Mr. Elmore, the twelfth section was amended by adding thereto the words "during their continuance in office."

Mr. Eastin moved to amend by striking out the words "and shall not be diminished during their continuance in office ;"

Which motion was lost.

The twelfth section was then concurred in.

The thirteenth section was read.

Mr. McKown moved to amend by inserting after the word "times" the words "and places ;" which was carried.

Mr. Jenkins, from the committee on the judiciary, called up his minority report, proposing the following as a substitute for the thirteenth section of the majority report :

"The judges shall be elected by the legislature until the year 1860, and then the election of judges shall be regulated by such act or acts as may be made by the legislative assembly of 1859."

The vote being taken the substitute was lost by—

AYES.—Messrs. Jenkins, Kuykendall, and Walker—3.

NOES.—Messrs. Adkins, Blair, Bryant, Bayne, Boling, Chilcs, Dolman, Doniphan, Danforth, Eastin, Elmore, Foreman, Hereford, Hascall, Henderson, Jones, of Johnson, Jones, of Douglas, Key, Little, Mathews, Moore, Martin, McKown, Oden, Reynolds, Redman, Randolph, of Riley, Reid, Smith, Spicely, Stewart, of Douglas, Todd, Vanderslice, Wells, Wilson, and Mr. President—36.

The thirteenth section was then concurred in.

The fourteenth section was read and concurred in.

The fifteenth section was read.

Mr. Boling moved to amend by providing that the term of office of the probate judges shall be two years instead of four ; which motion was lost.

Mr. Calhoun moved to amend by inserting after the word "circuit" the words "chancery and probate," and striking out all after the word "qualified ;" which motion was adopted.

Mr. Blair moved to amend by striking out the word "four," in the fourth printed line, and inserting the word "six ;" which motion was lost.

The fifteenth section, as amended, was then concurred in.

The sixteenth section was read.

Mr. Boling moved to amend by striking out the words "and sheriffs, constables, and coroners ;" which motion was adopted.

Mr. McKown moved to amend by striking out after the word "va-

cancies" the words "of such officers," and inserting the word "in such offices ;" which motion was adopted.

The sixteenth section was then concurred in.

The seventeenth section was read and concurred in.

The eighteenth section was read.

Mr. Elmore moved to fill the vacancies in the section with the word "Kansas "

Mr. Chiles moved to amend by inserting the word "Jefferson ;" which motion was lost.

Mr. Walker moved to amend by inserting the word "Kansas ;" which was withdrawn.

The amendment of Mr. Elmore was then adopted.

The section was then concurred in.

The nineteenth section was read and concurred in.

The twentieth section was read and concurred in.

The twenty-first section was read and concurred in.

The twenty-second section was read and concurred in.

The twenty-third section was read and concurred in ; when,

On motion of Mr. Danforth, the report of the committee on the judiciary was reported as a whole.

On motion,

The convention adjourned until 2 o'clock p. m.

TWO O'CLOCK P. M.

The convention met pursuant to adjournment.

The report of the committee on elections and rights of suffrage was taken up and read.

Mr. Wilson offered an amendment to the report ;

Which amendment was deferred until after the consideration of the report.

The first section was read, and

Mr. Boling moved to amend by striking out the word "white" wherever it occurs in the committee's report, and by inserting after the word "election" the words "and shall have paid for the year previous a territorial or state and county tax."

The amendment was adopted by the following vote :

AYES—Messrs. Adkins, Bryant, Boling, Butcher, Chiles, Danforth, Greenwood, Jenkins, Jones, of Johnson, Key, Kookagee, Kuykendall, Little, Moore, Martin, McKown, Reynolds, Redman, Randolph, of Atchison, Smith, Vanderslice, Walker, and Wilson—23.

NOES—Messrs. Blair, Dolman, Doniphan, Eastin, Elmore, Foreman, Hereford, Hascall, Henderson, Hamilton, Jones, of Douglas, Mathews, Oden, Randolph, of Ripley, Reid, Spicely, Stewart, of Douglas, Todd, Wells, and Mr. President—20

The first section, as amended, was concurred in.

The second section was read and amended by inserting after the word "voting" the words "by the people ;" and then the section was concurred in.

The third section was read and concurred in.

The fourth section was read and concurred in.

The fifth section was read and amended by inserting after the word "business" the words "of his own or."

The section was then concurred in.

The sixth section was read.

Mr. Boling moved the following as a substitute to the sixth section:

"No person employed in the military, naval, or marine service of the United States, stationed in this State, shall, by reason of his service therein, be deemed a resident;" which substitute was adopted.

And the section, as amended, was concurred in.

The seventh section was read.

Mr. Ellmore moved to strike out the entire section; which motion he afterwards withdrew.

Mr. Easton moved to amend the section by striking out the words "or any Indian not recognized as citizens by the laws of the United States;" whereupon

Mr. Little renewed the motion to strike out the entire section; which motion prevailed, and the section was stricken out.

The eighth section was read.

Mr. Boling moved to amend by striking out all after the word "military," and inserting in lieu thereof the words "who shall not be possessed of the qualifications hereinbefore proscribed for an elector;" which amendment was adopted by the following vote:

AYES—Messrs. Adkins, Blair, Bryant, Boling, Butcher, Chiles, Danforth, Easton, Greenwood, Jones, of Johnson, Key, Kuykendall, Little, Moore, Martin, McKown, Reynolds, Redman, Smith, Vander-slice, Wilson, and Mr. President—22.

NOES—Messrs. Dolman, Elmore, Foreman, Hereford, Hascall, Henderson, Jones, of Douglas, Mathews, Oden, Randolph, of Riley, Reid, Spicely, Stewart, of Douglas, Todd, Walker, and Wells—16.

The section, as amended, was then concurred in.

The ninth section was read, and,

On motion of Mr. Danforth, amended by striking out the words "general assembly" and inserting the word "legislature."

The section was then concurred in.

On motion of Mr. Boling,

The further consideration of the report was laid over until to-morrow.

On motion,

The convention adjourned until to-morrow morning at 9 o'clock.

LECOMPTON, *October 29, 1857.*

The convention met pursuant to adjournment.

The journal of yesterday was read and approved.

On motion of Mr. Boling,

The twentieth section of the report of the committee on the judiciary was reconsidered; whereupon

Mr. Boling moved to amend by striking out the word "sheriffs" and the words "and coroners," and inserting before the word "constables" the word "and;"

Which motion was adopted, and

The twentieth section, as amended, was concurred in.

Mr. Kuykendall, from the committee on boundaries, presented his report; which was,

On motion, laid on the table, and made the special order of the day for to-day at 2 o'clock.

Mr. Doniphan, from the committee on finance, presented his report; which was read, and,

On his motion, laid on the table, and made the special order of the day for to-morrow at 10 o'clock a. m.

Mr. Eastin, from the committee on the legislative department, made a report; which was read, and,

On motion, laid on the table, and made the special order of the day for 10 o'clock a. m. to-morrow.

Mr. Vanderslice, from the committee on corporations, made a report; which was read, and,

On motion of Mr. Elmore, it was laid on the table, ordered to be printed, and made the special order of the day for to-morrow morning at 11 o'clock.

Mr. Reid made the following report:

"The enrolling and engrossing committee beg leave to report that the bill of rights has been correctly enrolled."

On motion,

The report of the committee on elections and rights of suffrage was taken up.

Mr. Danforth offered the following as a substitute for the tenth section of the report of the committee:

"The general elections in this State shall be held on the first Monday in May, annually, except elections for governor, secretary of state, auditor of public accounts, and attorney general of the State, which shall be held biennially, on the day aforesaid, until otherwise provided by law."

Mr. Danforth afterwards withdrew his substitute;

Which was renewed by Mr. Elmore.

Mr. Key offered the following as a substitute for the substitute of Mr. Danforth:

"The general State elections shall be held on the first Monday in November, biennially, until otherwise provided by law;"

Which was accepted by Mr. Elmore.

Whereupon

Mr. Boling moved to amend the substitute so that it would read as follows:

"The general State elections shall be held biennially on the first Monday in November, until otherwise provided by law."

Mr. Jones, of Douglas, moved as a substitute for the foregoing substitutes and amendment the following:

"The first general election in this State shall be held on the day and year provided by this constitution, and all general elections thereafter on the day and year as provided by subsequent legislative enactments."

Upon which motion, Mr. Danforth called for the previous question.

The convention refused to sustain the call.

Whereupon

Mr. Elmore moved to defer the further consideration of the tenth section until to-morrow; which was,

On motion of Mr. Danforth, laid on the table.

Mr. Eastin moved to amend the substitute by inserting the word "biennially" after the word "held."

Mr. Stewart, of Douglas, moved to lay the motion on the table; which was carried.

The substitute offered by Mr. Jones was then adopted.

Mr. Martin moved that the first section of the report be reconsidered; which was carried by the following vote:

Ayes—Messrs. Blair, Dolman, Doniphan, Eastin, Elmore, Foreman, Hereford, Hascall, Henderson, Hamilton, Jones, of Douglas, Kookagee, Mathews, Moore, Martin, Oden, Randolph, of Riley, Reid, Swift, Spicely, Stewart, of Douglas, Todd, Vanderslice, Wells, and Mr. President—25.

Noes—Messrs. Adkins, Bryant, Boling, Butcher, Chiles, Danforth, Jenkins, Jones, of Johnson, Kuykendall, Key, Little, McKown, Reynolds, Redman, Randolph, of Atchison, Smith, Walker, and Wilson—18.

Whereupon

Mr. Henderson moved to amend the first section by striking out the words, "and shall have paid the year previous a territorial, State, or county tax."

Mr. Randolph moved to amend the section so as to provide that no person shall be permitted to vote unless he owns a negro; which motion was laid on the table.

The ayes and noes were called for upon Mr. Henderson's amendment, and it was adopted by a vote of—

Ayes—Messrs. Blair, Dolman, Doniphan, Eastin, Elmore, Foreman, Hereford, Hascall, Henderson, Hamilton, Jones, of Douglas, Kookagee, Mathews, Moore, Martin, Oden, Randolph, of Riley, Reid, Spicely, Stewart, of Douglas, Todd, Walker, Wells, and Mr. President—24.

Noes—Messrs. Adkins, Bryant, Boling, Butcher, Chiles, Danforth, Greenwood, Jenkins, Jones, of Johnson, Key, Kuykendall, Little, McKown, Reynolds, Redman, Randolph, of Atchison, Smith, Vanderslice, and Wilson—19.

Mr. Danforth moved to amend by striking out all after the words "United States," in the first line, down to "inhabitants," inclusive, and all after the word "vote," in the same section; which amendment was, on motion, laid on the table.

The first section, as amended, was then concurred in.

The eleventh section of the report, as offered by Mr. Wilson, was read, and,

On motion, it was laid on the table.

The twelfth section of the report, as offered by Mr. Wilson, was read, and,

On motion, it was laid on the table.

The report of the committee as a whole was then adopted by a vote of—

Ayes—Messrs. Blair, Dolman, Doniphan, Eastin, Elmore, Foreman, Hereford, Hascall, Henderson, Hamilton, Jones, of Douglas, Kookagee, Little, Mathews, Moore, Martin, Oden, Randolph, of Riley,

Reid, Spicely, Stewart, of Douglas, Todd, Walker, Wells, and Mr. President—25.

Noes—Messrs. Adkins, Bryant, Boling, Butcher, Chiles, Danforth, Greenwood, Jones, of Johnson, Key, Kuykendall, McKown, Redman, Reynolds, Randolph, of Atchison, Smith, Vanderslice, and Wilson—17.

Mr. Hamilton, from the committee on miscellaneous _____ presented a report, which was read and made the special order of the day for to-morrow at 10 o'clock a. m.

Mr. Reid moved to reconsider the first section of the report of the committee on elections; which was,

On motion of Mr. Henderson, laid on the table.

Mr. Moore, from the committee on slavery, presented a report which was read, and,

On motion, was laid on the table, ordered to be printed, and made the special order of the day for Saturday at 2 o'clock p. m.

On motion, the convention adjourned until 2 o'clock p. m.

TWO O'CLOCK P. M.

The convention met pursuant to adjournment.

Mr. Randolph moved that the vote taken this morning making the report of the committee on slavery the special order of the day for Saturday be reconsidered; which was.

Mr. Danforth offered the following resolution:

Resolved, That the sergeant-at-arms be required to furnish reporters with proper facilities for reporting outside the bar.

Mr. Hamilton moved to lay the resolution on the table; which was carried.

Mr. Danforth offered the following resolution:

Resolved, That the sergeant-at-arms be required to furnish reporters with proper facilities for reporting outside the bar; which was,

On motion of Mr. Hamilton, laid on the table.

The report of the committee on boundaries was taken up.

The preamble was read and concurred in.

The first section was read; whereupon

Mr. Wells moved to amend the same by striking out all after the words "that is to say," and insert in lieu thereof, the following:

"Beginning at a point on the western boundary of the State of Missouri where the thirty-seventh parallel of north latitude crosses the same, thence west on said parallel to longitude one hundred and one, thence north with said meridian to the fortieth parallel of latitude, thence east with the said parallel to the western boundary of the State of Missouri, thence south with the western boundary of said State to the place of beginning;

Which substitute was laid on the table by the following vote:

Ayes—Messrs. Boling, Butcher, Chiles, Dolman, Doniphan, Danforth, Elmore, Greenwood, Hascall, Henderson, Jenkins, Jones, of Johnson, Jones, of Douglas, Key, Kookagee, Kuykendall, Little, Moore, McKown, Oden, Redman, Randolph, of Riley, Smith, Spicely, Stewart, of Douglas, Todd, Vanderslice, Wilson, and Mr. President—32.

Noes—Messrs. Blair, Bryant, Eastin, Foreman, Hamilton, Here-

ford, Mathews, Reynolds, Randolph, of Atchison, Reid, Walker, and Wells—12.

Mr. Vanderslice moved the following amendment :

To strike out from the section the words "thence west," and to insert the following words: "to the northeast corner of the Territory of New Mexico, thence due north to the fortieth parallel of latitude and thence ;"

Which amendment was, on motion, laid on the table.

Mr. Eastin offered the following amendment:

Which amendment was, on motion, laid on the table.

The first section was then concurred in.

The second section was read.

Mr. Chiles moved to amend it by striking out the word "twenty," and inserting the words "twenty-four ;"

Which motion was lost.

The second section was then concurred in.

The report was then adopted as a whole.

Mr. Danforth, from the committee on education, presented a report ; which was, on his motion, taken up.

The first section of the report was read and concurred in.

The second section was read and concurred in.

The third section was read.

Mr. Hascall moved to amend by striking out all after the word "State ;"

Which motion was lost.

Mr. Foreman moved the following amendment as an addition to the second section :

"And the money which shall be paid by persons as an equivalent for exemption from military duty, except in times of war, and also all fines assessed for any breach of the penal laws, shall be applied to the support of the said schools ;"

Which amendment was lost.

Mr. Randolph, of Riley, moved to strike out the word "gratis," and insert the words "free of charge ;"

Which motion was lost.

The third section was then concurred in.

The fourth section was read and concurred in.

The fifth section was read and concurred in.

The report was then adopted as a whole.

Mr. Jenkins moved to reconsider the vote on the report ;

Which motion, on motion of Mr. Danforth, was laid on the table.

On motion, the convention adjourned until 7 o'clock this evening.

SEVEN O'CLOCK P. M.

The convention met pursuant to adjournment.

Mr. Spicely offered the following resolution :

Resolved, That a committee of five be appointed to inquire into the expediency of establishing institutions for the education of the deaf and dumb and of the blind, and also the treatment of the insane.

The resolution was lost.

Mr. Henderson moved to adjourn until to-morrow morning; which motion was lost.

On motion of Mr. Little, the vote making the report of the committee on slavery the order of the day for Saturday was reconsidered; and, on motion, the report of the committee on slavery was taken up.

On motion of Mr. Butcher, the convention resolved itself into a committee of the whole on the report from the committee on slavery, Mr. Little in the chair.

After having the report under consideration for some time, on motion, the committee rose; and the president being temporarily absent, Mr. Elmore was called to the chair.

The chairman of the committee then reported that the committee had considered the question, and asked to be discharged; but made no further report. And the house discharged the committee.

On motion of Mr. Danforth, the first section of the report was read; when

Mr. Hereford moved to postpone the further consideration of the report until to-morrow at 9 o'clock a. m.

Mr. Henderson moved that the convention adjourn; which motion was lost.

Mr. Jones, of Johnson, moved the previous question; which was lost; and,

On motion, the convention adjourned until to-morrow morning at 9 o'clock.

LECOMPTON, *October 30, 1857.*

The convention met pursuant to adjournment.

Prayer by the Rev. Mr. Mayee.

The journal of yesterday was read and approved.

The report of the committee on slavery was then taken up.

Mr. Key moved to amend the first section by inserting before the word "power" the word "full;" and his motion was lost.

Mr. Boling moved to amend by striking out the words "prevent slaves from being brought into the State as merchandise and also;" upon which amendment

Mr. Danforth moved the previous question; and the previous question was ordered. Whereupon the ayes and noes were demanded, and the amendment was lost by the following vote:

Ayes—Messrs. Adkins, Blair, Bryant, Boling, Danforth, Foreman, Greenwood, Hamilton, Jenkins, Jones, of Johnson, Keys, Kuykendall, Little, Mathews, McKown, Reynolds, Redman, Randolph, of Atchison, Smith, Vanderslice, and Wilson—21.

Noes—Messrs. Bayne, Chiles, Dolman, Doniphan, Easton, Elmore, Hereford, Hascall, Henderson, Jones, of Douglas, Kookagee, Moore, Martin, Oden, Randolph, of Riley, Reid, Spicely, Stewart, of Douglas, Walker, Wells, and Mr. President—21.

Mr. Eastin moved that the vote just taken be reconsidered; which motion prevailed.

And the question recurring on Mr. Boling's amendment, it was adopted by the following vote:

Ayes—Messrs. Adkins, Blair, Bryant, Boling, Butcher, Danforth, Foreman, Greenwood, Hamilton, Jenkins, Jones, of Johnson, Key, Kuykendall, Little, Mathews, McKown, Reynolds, Redman, Randolph, of Atchison, Smith, Vanderslice, and Wilson—22.

Noes—Messrs. Bayne, Chiles, Dolman, Doniphan, Eastin, Elmore, Hereford, Hascall, Henderson, Jones, of Douglas, Kookagee, Moore, Martin, Oden, Randolph, of Riley, Reid, Spicely, Stewart, of Douglas, Walker, Wells, and Mr. President—21.

Mr. Blair moved the following preamble to the report of the committee on slavery:

“The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same, and is as inviolable as the right of the owner of any property whatever.”

Which preamble was adopted by the following vote:

Ayes—Messrs. Adkins, Blair, Bryant, Boling, Bayne, Butcher, Chiles, Doniphan, Danforth, Eastin, Elmore, Foreman, Greenwood, Hereford, Hascall, Henderson, Hamilton, Jenkins, Jones, of Johnson, Jones, of Douglas, Key, Kookagee, Kuykendall, Little, Mathews, Moore, Martin, McKown, Oden, Reynolds, Redman, Randolph, of Riley, Smith, Spicely, Stewart, of Douglas, Vanderslice, Walker, Wells, Wilson, and Mr. President—40.

Noes—Messrs. Dolman, Randolph, of Atchison, and Reid—3.

Mr. Danforth moved that the first section of the report as amended be concurred in;

Which motion was adopted by the following vote:

Ayes—Messrs. Adkins, Blair, Bryant, Bayne, Boling, Butcher, Chiles, Dolman, Doniphan, Danforth, Eastin, Elmore, Foreman, Greenwood, Hereford, Hascall, Henderson, Hamilton, Jenkins, Jones, of Johnson, Jones, of Douglas, Key, Kookagee, Kuykendall, Little, Mathews, Moore, Martin, McKown, Oden, Reynolds, Redman, Randolph, of Atchison, Randolph, of Riley, Smith, Stewart, of Douglas, Vanderslice, Walker, Wells, Wilson, and Mr. President—41.

Noes—Messrs. Reid and Spicely—2.

The second section was read; whereupon

Mr. Boling moved to amend by striking out the words “prevent slaves from being brought into the State as merchandise, and also to;”

Which amendment was adopted.

The third section, as amended, was then concurred in.

The third section was read and concurred in.

The fourth section was read and concurred in.

The additional section offered by Mr. Chiles was taken up, and, on motion, laid on the table.

The report of the committee, as a whole, was then adopted by the following vote:

Ayes—Messrs. Adkins, Blair, Bryant, Bayne, Boling, Butcher, Chiles, Dolman, Danforth, Eastin, Elmore, Foreman, Greenwood, Hereford, Hascall, Henderson, Hamilton, Jenkins, Jones, of Johnson,

Jones, of Douglas, Key, Kookagee, Kuykendall, Little, Mathews, Moore, McKown, Oden, Reynolds, Redman, Randolph, of Atchison, Randolph, of Riley, Smith, Stewart, of Douglas, Vanderslice, Walker, Wells, Wilson, and Mr. President—39.

Noes—Messrs. Reid and Spicely—2

On motion, the convention adjourned until two o'clock this afternoon.

TWO O'CLOCK P. M.

The convention met pursuant to adjournment.

Mr. Danforth moved to reconsider the vote taken this forenoon, adopting the report of the committee on slavery as a whole.

On motion of Mr. Jenkins,

The motion was laid on the table.

Mr. Jenkins moved

"That a select committee, to consist of five members, be appointed to report the election districts of the State of Kansas, and to apportion the representation on the same;" which motion was adopted; and

The chair appointed Messrs. Jenkins, Henderson, Hamilton, Boling, and Reid said committee.

The report from the committee on miscellaneous provision was taken up.

The first section was read and concurred in.

The second section was read, and, on motion, was stricken out.

The third section was read.

Mr. Boling moved to amend by striking out the words "and an act of Congress known as the fugitive slave law," and insert in lieu thereof the words "and all laws made in pursuance thereof, and faithfully to demean himself in the discharge of the duties of his office;" which was adopted; and the third section, as amended, was concurred in.

The fourth section was read and concurred in.

The fifth section was read, and, on motion, was stricken out.

The sixth section was read and concurred in.

The seventh section was read.

Mr. Wilson moved to strike out the word "majority," and insert the words "two-thirds."

Mr. Reynolds moved to amend the amendment by striking out the entire section; which motion was lost.

The vote was then taken on the motion of Mr. Wilson, and it was lost.

Mr. Jones, of Johnson, moved to amend by striking out the words "law and;" which was lost.

Mr. Jones, of Johnson, moved the following substitute for the seventh section:

"The legislature of this State shall have no power to locate the county seats of the several counties of this State; but a majority of the voters of each county shall choose the point where they wish their county seat located, under such laws as the legislature shall pass for that purpose; and, when so located, two-thirds of the votes of each county shall be necessary to remove it; *Provided*, that when county buildings of value and permanence have been erected at any county seat now located by law, it shall require a majority, consisting of two-thirds of the votes polled at any election, to change it."

Which motion was lost.

The seventh section was then concurred in.

The eighth section was read, and, on motion, it was stricken out.

The ninth section was read and concurred in.

The tenth section was read and concurred in.

The report of the committee as a whole, as amended, was then adopted; and,

On motion, the convention adjourned until to-morrow at nine o'clock a m.

LECOMPTON, *October 31, 1857.*

The convention met pursuant to adjournment.

The journal of yesterday was read and approved.

The chair announced that a vacancy existed in the committee on revenue, and appointed Mr. Jones, of Douglas, to fill the vacancy.

Mr. Jones asked to be excused from serving on the committee, and was, on motion, excused; whereupon Mr. Wells was appointed.

Mr. Reid asked leave to change his vote of yesterday on the preamble offered by Mr. Blair to the report of the committee on slavery, and the votes incident thereto.

The report of the committee on corporations was taken up.

The first section was read and concurred in.

The second section was read.

Mr. Elmore moved to amend by adding to the section the words "and paid;" which motion was adopted, and the section, as amended, was concurred in.

The third section was read and concurred in.

The fourth section was read and concurred in.

The fifth section was read, when Mr. Elmore moved to strike out the fifth section; which motion was lost by the following vote:

Ayes—Messrs. Bayne, Elmore, Hamilton, Jenkins, Jones, of Johnson, Jones, of Douglas, Kuykendall, Reynolds, Randolph, of Atchison, Reid, Smith, and Wells—12.

Noes—Messrs. Blair, Bryant, Chiles, Dolman, Danforth, Eastin, Foreman, Greenwood, Hereford, Hascall, Key, Little, Mathews, Oden, Randolph, of Riley, Spicely, Stewart, of Douglas, Vanderslice, Wilson, and Mr. President—20.

Mr. Dolman moved the following amendment: To strike out all after the word "issue" down to the word "river," and insert "with branches, with not less than two on the north side and two on the south side of the"; which amendment was lost.

Mr. Dolman moved to amend by striking out "and the whole capital of which shall not exceed three millions of dollars;" and pending the motion on the amendment,

The convention adjourned until 2 o'clock p. m.

TWO O'CLOCK P. M.

The convention met pursuant to adjournment.

Mr. Wells offered as a substitute to the fifth section of the report on corporations: "That the legislature shall have no power to charter banks;" which was laid on the table by—

AYES—Messrs. Adkins, Blair, Bryant, Chiles, Dolman, Danforth, Foreman, Hascall, Key, Kookagee, Little, Mathews, Martin, Randolph, of Riley, Stewart, of Douglas, Vanderslice, Wilson, and Mr. President—18.

NOES—Messrs. Bayne, Eastin, Elmore, Hereford, Henderson, Jones, of Douglas, Moore, McKown, Reynolds, Redman, Reid, Spicely, and Wells—13.

The question was then put on the motion of Mr. Dolman to strike out; and was carried by—

AYES—Messrs. Adkins, Blair, Bryant, Dolman, Danforth, Eastin, Hascall, Henderson, Jenkins, Jones, of Douglas, Key, Kookagee, Little, Mathews, Martin, Oden, Randolph, of Riley, Stewart, of Douglas, Wilson, and Mr. President—22.

NOES—Messrs. Bayne, Chiles, Elmore, Moore, Reynolds, Redman, Randolph, of Atchison, Reid, Smith, Spiceley, Vanderslice, and Wells—12.

Mr. Dolman moved that the words "with not less than two and not more than four" be stricken out.

Mr. Elmore objected to the motion as being out of order.

The President decided the motion to be in order.

Mr. Elmore appealed from the decision of the chair; and

The chair was sustained by the house; whereupon,

The question was put on Mr. Dolman's motion; and it was rejected.

Mr. Moore moved to amend the section by striking out all after the word "branches," down to the word "provided;" which amendment was adopted.

Mr. Boling moved to amend by striking out the words "not less than two and not more than four branches," and inserting the words "not more than two branches; which motion was adopted.

The fifth section, as amended, was then concurred in by—

AYES—Messrs. Adkins, Blair, Bryant, Boling, Chiles, Dolman, Danforth, Eastin, Foreman, Hereford, Hascall, Jones, of Johnson, Key, Kookagee, Little, Mathews, Martin, McKown, Randolph, of Riley, Spicely, Stewart, of Douglas, Vanderslice, Wilson, and Mr. President—24.

NOES—Messrs. Bayne, Elmore, Hamilton, Jenkins, Jones, of Douglas, Reynolds, Redman, Reid, Smith, and Wells—10.

The sixth section was read.

Mr. Danforth moved to insert the word "not" after the word "shall" and before the word "be."

Mr. Little moved to strike out all except the last clause; which motion was lost by the following vote:

AYES—Messrs. Adkins, Blair, Bryant, Dolman, Little, Mathews, Martin, Stewart, of Douglas, and Wilson—9.

NOES—Messrs. Bayne, Boling, Chiles, Danforth, Eastin, Elmore, Foreman, Hascall, Hamilton, Jenkins, Jones, of Johnson, Key, Moore, Reynolds, Redman, Randolph, of Riley, Reid, Smith, Spicely, Vanderslice, Wells, and Mr. President—22.

On motion, the convention adjourned until morning, at 9 o'clock.

LECOMPTON, *November 2, 1857.*

The convention met pursuant to adjournment.

The journal of Saturday was read and approved.

The consideration of the reports of the committee on corporations was resumed.

The sixth section was taken up; and the question recurring on the motion of Mr. Danforth to amend, by inserting the word "not" after the word "shall" and before the word "be," the motion was lost by the following vote:

AYES—Messrs. Blair, Boling, Barlow, Dolman, Danforth, Eastin, Foreman, Jenkins, Jones, of Johnson, Mobley, Redman, Walker, Wilson, and Mr. President—18.

NOES—Messrs. Adkins, Bryant, Bayne, Chiles, Doniphan, Elmore, Greenwood, Hereford, Hamilton, Kookagee, Little, Moore, Martin, McKown, Reynolds, Randolph, of Atchison, Randolph, of Riley, Reid, Smith, Swift, Spicely, Stewart, of Douglas, Todd, Vanderslice, and Wells—25.

The house then refused to concur with the committee in the sixth section of their report, and the section was rejected by the following vote:

AYES—Messrs. Adkins, Blair, Bryant, Chiles, Dolman, Hamilton, Jones, of Johnson, Kookagee, Little, Moore, Martin, McKown, Reynolds, Randolph, of Riley, Spicely, Stewart, of Douglas, Vanderslice, and Walker—18.

NOES—Messrs. Bayne, Boling, Barlow, Doniphan, Danforth, Eastin, Elmore, Foreman, Greenwood, Hereford, Jenkins, Mobley, Oden, Redman, Randolph, of Atchison, Reid, Smith, Swift, Todd, Wells, Wilson, and Mr. President—22.

Mr. Danforth gave notice that he would, at some future time, move to reconsider the vote just taken.

The seventh section was read; and,

On motion of Mr. Vanderslice,

The further consideration of the report was postponed until three o'clock this afternoon.

The report of the committee on the legislative department was taken up. The first section of the report was read.

On motion of Mr. Danforth,

The first section was amended by inserting before the word "senate" the letter "A."

The section was then concurred in.

The second section was read; and, on motion of Mr. Danforth, was amended by inserting, after the words "United States," the words "except postmasters."

The second section was then concurred in.

The third section was read and concurred in.

Mr. Moore gave notice of his intention to move a reconsideration of the vote just taken.

The fourth section was read.

Mr. Elmore moved to amend by striking out the word "two," and inserting the word "one."

The motion was lost ; and

The section was concurred in.

The fifth section was read.

Mr. Hamilton moved to amend by inserting, after the word "places," the words "by the qualified voters."

Which motion he withdrew.

Mr. Elmore moved to amend by striking out the word "four" and inserting the word "three."

Which motion was lost.

Mr. Boling moved to amend by striking out the words "where they vote," and inserting the words "as are herein provided."

And the motion was carried.

Mr. Hascall moved to amend by striking out the word "four," and inserting the word "two;" which was lost.

The fifth section, as amended, was then concurred in.

The sixth section was read and concurred in.

The seventh section was read.

Mr. Danforth moved to amend by striking out the word "members," and inserting the word "senators;" which motion prevailed, and the section, as amended, was then concurred in.

The eighth section was read and concurred in.

The ninth section was read and concurred in.

The tenth section was read and concurred in.

The eleventh section was read, and, on motion of Mr. Boling, it was amended, by inserting before the word "imprisonment" the words "fine or," and after the word "imprisonment" the words "or both."

Mr. Dolman moved to strike out the words "in its discretion;" which was lost.

Mr. Hamilton moved to amend, by inserting the words "in its discretion" after the word "may," and striking out the words "in its discretion" after the word "proceedings."

Which motion was adopted, and the section, as amended, was concurred in.

The twelfth section was read and concurred in.

The thirteenth section was read.

Mr. Eastin moved that the words "general assembly" be stricken out, and the word "legislature" be inserted ; which motion was agreed to, and the section, as amended, was concurred in.

The fourteenth section was read and concurred in.

The fifteenth section was read ; and,

On motion of Mr. Boling, was amended by striking out the word "branch" and inserting the word "house."

The section, as amended, was then concurred in.

The sixteenth section was read and concurred in.

The seventeenth section was read ; and,

On motion of Mr. Elmore, it was amended by striking out the word "altered."

On motion of Mr. Eastin,

The section was further amended by inserting after the word "pres-

ident," the words "in the presence;" and the section, as amended, was concurred in.

The eighteenth section was read; and,

On motion of Mr. Key, it was amended by inserting after the word "provide," the words "by general law."

The section was then concurred in.

The nineteenth section was read.

Mr. Stewart, of Douglas, moved to strike out the whole section; which motion was lost.

Mr. Elmore moved to amend by striking out all after the word "open;" which motion was, on motion of Mr. Dauforth, laid on the table.

The nineteenth section was then concurred in.

The twentieth section was read; and,

On motion of Mr. Eastin, it was amended by striking out the word "object" and inserting the word "subject;" and the section, as amended, was then concurred in.

The twenty-first section was read.

Mr. Randolph, of Atchison, moved to strike out the entire section; which was lost, and the section was concurred in.

The twenty-second section was read.

Mr. Jenkins moved to amend by striking out the word "law," in the last line, and inserting "legislative enactment."

Mr. Randolph, of Atchison, moved to amend the amendment by striking out the words "until altered by law."

Mr. McKown moved, as a substitute to the amendments, to strike out the words "altered by law" and insert the words "otherwise provided by law;" whereupon,

Mr. Jenkins withdrew his amendment.

Mr. McKown then withdrew his substitute; after which,

The amendment of Mr. Randolph was adopted.

Mr. Calhoun moved to amend by striking out the words "two years" and inserting the word "years;" and the motion was lost.

The twenty-second section, as amended, was then concurred in.

The twenty-third section was read and concurred in.

The twenty-fourth section was read.

Mr. Hereford moved to amend by inserting after the word "legislature" the words "or exercise any judicial power not herein expressly conferred;" and the motion was lost.

The twenty-fourth section was then concurred in.

Mr. Stewart, of Douglas, moved to amend the report of the committee by adding the following section:

"SECTION 25. It shall be the duty of the legislature to pass laws making it the duty of all civil officers to use due diligence in securing fugitives from labor in this or from other States who may be found within the limits of this State."

Mr. Randolph, of Atchison, moved to strike out the words "fugitives from labor" and insert the words "fugitive slaves;" and the amendment was adopted.

Mr. McKown moved to strike out the word "securing" and insert the words "the securing and rendition of;" and

The amendment was adopted. After which,

The section, as amended, was added to and made to form a part of the report of the committee; and

The report, as amended, was adopted.

Mr. Elmore gave notice that he would move a reconsideration of the twenty-fifth section; after which,

The convention adjourned until 2 o'clock p. m.

TWO O'CLOCK P. M.

The convention met pursuant to adjournment.

The report of the committee on finance was taken up and read by the secretary.

Mr. Wells moved that the first and second sections of the report be referred to the committee on revenue.

Mr. Danforth moved to lay the motion on the table; which was carried by

AYES—Messrs. Adkins, Blair, Bryant, Bayne, Boling, Chiles, Dolman, Danforth, Eastin, Elmore, Foreman, Greenwood, Hereford, Hascall, Hamilton, Jenkins, Jones, of Johnson, Key, Kuykendall, Little, Mathews, Moore, Martin, Mobley, McKown, Oden, Randolph, of Riley, Reid, Smith, Spicely, Todd, Vanderslice, and Wilson—32.

NOES—Messrs. Butcher, Barlow, Christerson, Reynolds, Redman, Randolph, of Atchison, Reid, Wells, and Mr. President—9.

Mr. Butcher moved to refer the first section to the committee on revenue, and the motion was lost.

The first section was then read and concurred in.

The second section was read.

Mr. Danforth moved the following amendment:

"Provided that every voter in the State shall pay a capitation tax;" whereupon,

Mr. Hamilton moved to lay the amendment on the table; which motion was carried by—

AYES—Messrs. Blair, Bayne, Bryant, Barlow, Dolman, Eastin, Elmore, Foreman, Hereford, Hascall, Hamilton, Jenkins, Key, Mathews, Moore, Martin, McKown, Oden, Randolph, of Riley, Spicely, Stewart, of Douglas, Todd, Wells, Wilson, and Mr. President—26.

NOES—Messrs. Boling, Butcher, Chiles, Danforth, Greenwood, Jones, of Johnson, Kuykendall, Little, Mobley, Reynolds, Redman, Randolph, of Atchison, Smith, and Vanderslice—14.

The second section was then concurred in.

The third section was read.

Mr. Danforth moved to strike out the whole section; which was lost.

Mr. Stewart, of Douglas, moved to fill the blank in the section by inserting \$200,000.

Mr. Hamilton moved to amend by inserting \$500,000.

Mr. Boling moved to amend by striking out the words "for the

purpose of defraying extraordinary expenditures, the State may contract a public debt, not to exceed at any one time \$200,000: *Provided*, The State debt shall never exceed, in the aggregate, \$10,000,000."

Mr. Randolph, of Atchison, moved to insert in the blank \$10,000,000.

Mr. Vanderslice moved that the blank be filled by inserting \$500,000; and the motion was carried.

Mr. Bowling moved that the third section, as amended, be stricken out, and the motion was lost by—

AYES—Messrs. Boling, Butcher, Barlow, Dolman, Danforth, Eastin, Kuykendall, Oden, Redman, Randolph, of Atchison, and Swift—11.

NOES—Messrs. Blair, Bryant, Bayne, Chiles, Elmore, Foreman, Hereford, Hascall, Hamilton, Jones, of Johnson, Key, Little, Mathews, Moore, Mobley, McKown, Reynolds, Randolph, of Riley, Reid, Smith, Spicely, Stewart, of Douglas, Todd, Vanderslice, Wells, Wilson, and Mr. President—27.

Mr. Dolman moved to add to the third section the words "but the money thus raised shall be applied exclusively to the purposes for which it was raised;" and the motion was lost.

The third section, as amended, was then concurred in.

The fourth section was read.

Mr. Wells moved to strike out the entire section; and the motion was lost.

The fourth section was then concurred in.

The fifth section was read and concurred in.

The sixth section was read.

Mr. Boling moved that the words "general assembly" be stricken out, and the word "legislature" be inserted; and the motion was carried.

The sixth section was then concurred in.

The seventh section was read, and, on motion, was stricken out.

The eighth section was read and concurred in.

On motion of Mr. Key, the following was adopted as the eighth section of the report:

"SEC. 8. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the legislature."

Mr. Randolph, of Riley, gave notice of his intention to move a reconsideration of the vote on the third section.

Mr. Jenkins asked to be excused from further service on the committee on revenue; and the convention refused to excuse him.

Mr. Dolman moved to reconsider the vote.

Mr. Jones, of Johnson, moved that the whole committee be discharged.

Mr. Stewart, of Douglas, moved to lay the motion on the table; but withdrew his motion.

Mr. Jones' motion was then put and lost; and

The convention adjourned until to-morrow, at 9 o'clock a. m.

LECOMPTON, November 3, 1857.

The convention met pursuant to adjournment.

On motion of Mr. Little, it was

Resolved, That a committee of three be appointed to arrange the order of the several reports adopted by the convention, and that said committee be authorized to report such changes in the several parts on the constitution as shall improve the style without affecting the substance of the constitution."

The chair appointed on the committee Messrs. Elmore, Danforth, and Doniphan.

The report of the committee on incorporations was taken up as unfinished business.

On motion of Mr. Danforth, the vote on the sixth section was reconsidered.

Mr. Stewart, of Douglas, offered the following as a substitute:

"The legislature may submit to the voters at any general election the question of banks or no banks; and if, at any such election, a number of votes equal to a majority of all the votes cast at such election on that subject shall be in favor of banks, then the legislature shall have power to grant bank charters, with such restrictions and under such regulations as they may deem expedient and proper for the security of the bill-holders: *Provided*, That no such grant or law shall have any force or effect until the same shall have been submitted to a vote of the electors at some general election, and been approved by a majority of the votes cast on that subject at such election."

Mr. Boling moved to amend the section as reported by the committee by striking out the words "over and above" and inserting the words "equal to."

On motion of Mr. Butcher the substitute offered by Mr. Stewart was laid on the table.

The amendment offered by Mr. Boling was then adopted by—

Ayes—Messrs. Blair, Boling, Butcher, Bradford, Barlow, Connell, Dolman, Danforth, Eastin, Foreman, Greenwood, Hascall, Heiskell, Key, Little, Mathews, Martin, Mobley, McKown, Oden, Stewart, of Douglas, Todd, Vanderslice, Walker, Wilson, and Mr. President—26.

Noes—Messrs. Bayne, Bryant, Christerson, Elmore, Hereford, Hamilton, Jenkins, Kuykendall, Moore, Reynolds, Redman, Randolph, of Riley, Smith, Swift, Spicely, and Wells—16.

Mr. Eastin moved to amend by inserting after the words "bank or branches" the words "each stockholder shall be worth double the amount of stock subscribed over and above all liabilities."

Which, on motion of Mr. Butcher, was laid on the table by—

Ayes—Messrs. Blair, Bryant, Boling, Butcher, Bradford, Barlow, Connell, Chiles, Dolman, Danforth, Foreman, Greenwood, Heiskell, Little, Moore, Martin, Oden, Swift, Stewart, of Douglas, Todd, Vanderslice, and Wilson—22.

Noes—Messrs. Bayne, Christerson, Eastin, Elmore, Hereford, Hascall, Hamilton, Jenkins, Key, Kuykendall, Mathews, Mobley, Reynolds, Redman, Reid, Smith, Spicely, Walker, Wells, and Mr. President—20.

And the sixth section was then concurred in by the following vote:

AYES—Messrs. Bryant, Boling, Butcher, Bradford, Barlow, Christerson, Connell, Dolman, Danforth, Eastin, Foreman, Greenwood, Hascall, Heiskell, Key, Kuykendall, Mathews, Martin, Mobley, Oden, Randolph, of Riley, Spicely, Stewart, of Douglas, Todd, Vanderslice, Walker, Wilson, and Mr. President—29.

NOES—Messrs. Bayne, Chiles, Elmore, Hereford, Hamilton, Jenkins, Moore, Reynolds, Redman, Reid, Smith, Swift, and Wells—13.

The seventh section was read and concurred in.

Mr. Wells offered the following additional section:

"**Sec. 8.** Said bank and branches shall be required, before issuing any bills or notes, to deposit with the auditor of the State stocks of the United States, or of one of the several States of the United States, which regularly pays the interest on its public stocks, at their then par value, or bonds and mortgages in improved real estate, at not over one-half its unimproved value, to the full amount of the bills which they desire to issue; which bills shall be engraved, with a certificate by the auditor of the State, and shall be registered in his office, and countersigned by him, or an officer appointed for that purpose, before they are delivered to the officers of the bank."

Which was laid on the table.

On motion of Mr. Danforth, the previous question was ordered by—

AYES—Messrs. Blair, Bryant, Boling, Butcher, Bradford, Barlow, Christerson, Connell, Chiles, Dolman, Danforth, Foreman, Greenwood, Hascall, Heiskell, Jenkins, Kuykendall, Little, Mathews, Moore, Martin, Mobley, Oden, Randolph, of Riley, Swift, Spicely, Stewart, of Douglas, Todd, Vanderslice, Walker, Wilson, and Mr. President—32.

NOES—Messrs. Bayne, Eastin, Elmore, Hamilton, Reynolds, Redman, Reid, Smith, and Wells—9.

The report was then adopted as a whole by—

AYES—Messrs. Blair, Bryant, Boling, Butcher, Bradford, Barlow, Connell, Chiles, Dolman, Danforth, Foreman, Greenwood, Hascall, Heiskell, Key, Little, Mathews, Martin, Oden, Randolph, of Riley, Spicely, Stewart, of Douglas, Todd, Vanderslice, Walker, Wilson, and Mr. President—27.

NOES—Messrs. Bayne, Christerson, Eastin, Elmore, Hamilton, Jenkins, Kuykendall, Moore, Mobley, Reynolds, Redman, Reid, Smith, Swift, and Wells—15.

Mr. Little moved to reconsider the vote just taken; which motion was, on motion of Mr. Danforth, laid on the table.

The report of the committee on the legislative department was then taken up, and, on motion, the vote on the 25th section of the report was reconsidered.

On motion of Mr. Elmore, the following was adopted as a substitute for the 25th section:

"**SECTION 25.** It shall be the duty of all civil officers of this State to use due diligence in the securing and rendition of persons held to service or labor in this State, or either of the States or Territories of the United States; and the legislature shall enact such laws as may

be necessary for the honest and faithful carrying out of this provision of the constitution."

Mr. Hamilton offered the following :

"*Resolved*, That this convention adjourn *sine die* on Friday next, at 7 o'clock p. m.

The consideration of which resolution was deferred until 3 o'clock this afternoon.

On motion, the convention adjourned until 2 o'clock p. m.

EXHIBIT No. 5.

CONSTITUTION OF THE STATE OF KANSAS.

PREAMBLE.

We, the people of the Territory of Kansas, by our representatives in convention assembled at Lecompton, in said Territory, on Monday, the fourth day of September, one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-second year, having the right of admission into the Union as one of the United States of America, consistent with the federal Constitution and by virtue of the treaty of cession by France to the United States of the province of Louisiana, made and entered into on the thirtieth day of April, one thousand eight hundred and three, and by virtue of, and in accordance with, the act of Congress passed March the thirtieth, one thousand eight hundred and fifty-four, entitled "An act to organize the Territories of Nebraska and Kansas," in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty, and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free, independent, and sovereign State by the name and style of the State of Kansas, and do ordain and establish the following constitution for the government thereof :

ARTICLE I.—*Boundaries.*

We do declare and establish, ratify and confirm the following as the permanent boundaries of the said State of Kansas, that is to say: Beginning at a point on the western boundary of the State of Missouri where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning.

ARTICLE II.—*County Boundaries.*

No county now established which borders upon the Missouri river, or upon either bank of the Kansas river, shall ever be reduced by the formation of new counties to less than twenty miles square; nor shall any other county now organized, or hereafter to be organized, be reduced to less than five hundred square miles.

ARTICLE III.—*Distribution of Powers.*

The power of the government of the State of Kansas shall be divided into three separate departments—the executive, the legislative, and the judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE IV.—*Executive Department.*

SECTION 1. The chief executive power of this State shall be vested in a governor, who shall hold his office for two years from the time of his installation.

SEC. 2. The governor shall be elected by the qualified electors of the State. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the secretary of state, who shall deliver them to the speaker of the house of representatives at the next ensuing session of the legislature, during the first week of which session the speaker shall open and publish them in the presence of both houses of the legislature. The person having the highest number of votes shall be governor; but if two or more shall be equal, and having received the highest number of votes, then one of them shall be chosen governor by the joint ballot of both houses of the legislature; contested elections for governor shall be determined by both houses of the legislature in such manner as may be prescribed by law.

SEC. 3. The governor shall be at least thirty years of age, shall have been a citizen of the United States for twenty years, shall have resided in this State at least five years next preceding the day of his election or from the time of the formation of this constitution, and shall not be capable of holding the office more than four years in any term of six years.

SEC. 4. He shall, at stated terms, receive for his services a compensation which shall be fixed by law, and shall not be increased or diminished during the term for which he shall be elected.

SEC. 5. He shall be commander-in-chief of the army and navy of this State, and of the militia, except when they shall be called into the service of the United States.

SEC. 6. He may require information in writing from officers in the executive department on any subject relating to the duties of their respective offices.

SEC. 7. He may, in cases of emergency, convene the legislature at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or disease; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he may think proper, not beyond the next stated meeting of the legislature.

SEC. 8. He shall, from time to time, give the legislature information of the State of the government, and recommend to their consideration such measures as he may deem necessary and expedient.

SEC. 9. He shall take care that the laws be faithfully executed.

SEC. 10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons and remit fines; and in cases of forfeitures, to stay the collection until the end of the next session of the legislature, and to remit forfeitures by and with the advice and consent of the senate. In cases of treason he shall have power to grant reprieves by and with the advice and consent of the senate, but may respite the sentence until the end of the next session of the legislature.

SEC. 11. All commissions shall be in the name and by the authority of the State of Kansas, be sealed with the great seal, and signed by the governor, and attested by the secretary of state.

SEC. 12. There shall be a seal of this State, which shall be kept by the governor and used by him officially, and the present seal of this Territory shall be the seal of the State until otherwise directed by the legislature.

SEC. 13. All vacancies not provided for in this constitution shall be filled in such manner as the legislature may prescribe.

SEC. 14. The secretary of State shall be elected by the qualified electors of the State, and shall continue in office during the term of two years, and until his successor is qualified. He shall keep a fair register of all the official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto, before the legislature, and shall perform such other duties as may be required by law.

SEC. 15. Every bill which shall have passed both houses of the legislature shall be presented to the governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, which shall enter the objections at length upon their journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of the house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of that house, it shall become a law; but in such case, the votes of each house shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journals of each house, respectively. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not become a law.

SEC. 16. Every order, resolution, or vote, to which the concurrence

of both houses may be necessary, except resolutions for the purpose of obtaining the joint action of both houses, and on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in case of a bill.

SEC. 17. A lieutenant governor shall be elected at the same time and for the same term as the governor, and his qualifications and the manner of his election shall be the same in all respects.

SEC. 18. In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant governor, and the legislature shall provide by law for the discharge of the executive functions in other necessary cases.

SEC. 19. The lieutenant governor shall be president of the senate, but shall have no vote except in the case of a tie, when he may give the casting vote; and while acting as such shall receive a compensation equal to that allowed to the speaker of the house of representatives.

SEC. 20. A sheriff, and one or more coroners, a treasurer and surveyor shall be elected in each county by the qualified electors thereof, who shall hold their offices for two years, unless sooner removed, except that the coroner shall hold his office until his successor be duly qualified.

SEC. 21. A State treasurer and auditor of public accounts shall be elected by the qualified electors of the State, who shall hold their offices for the term of two years, unless sooner removed.

ARTICLE V.—*Legislative Department.*

SECTION 1. The legislative authority of this State shall be vested in a legislature, which shall consist of a senate and house of representatives.

SEC. 2. No person holding office under the authority of the United States, except postmasters, or any lucrative office under the authority of this State, shall be eligible to or have a seat in the legislature; but this provision shall not extend to township officers, justices of the peace, notaries public, or military officers.

SEC. 3. No person who has been, or may hereafter be, convicted of a penitentiary offence, or of an embezzlement of the public funds, shall hold any office in this State; nor shall any person holding public money for disbursement or otherwise have a seat in the legislature until he shall have accounted for and paid such money into the treasury.

SEC. 4. The members of the house of representatives shall be elected by the qualified electors, and shall serve for the term of two years from the close of the general election and no longer.

SEC. 5. The senators shall be chosen for the term of four years at the same time, in the same manner, and at the same places as are herein provided for members of the house of representatives.

SEC. 6. At the first session of the legislature the senate shall, by lot,

divide their senators into two classes; and the seats of the senators of the first class shall be vacated at the expiration of the second year, and of the second class at the expiration of the fourth year, so that one-half, as near as may be, may be chosen thereafter every two years for the term of four years.

Sec. 7. The number of senators shall not be less than thirteen nor more than thirty-three; and at any time when the number of senators is increased, they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as possible.

Sec. 8. The number of members of the house of representatives shall not be less than thirty-nine, nor more than one hundred.

Sec. 9. The style of the laws of this State shall be, "Be it enacted by the legislature of the State of Kansas."

Sec. 10. Each house may determine the rules of its own proceedings, punish its members for disorderly behavior, and, with the consent of two-thirds, may expel a member; but not a second time for the same offence. The names of the members voting on the question shall be spread upon the journal.

Sec. 11. Each house during the session may, in its discretion, punish by fine or imprisonment, or both, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceedings: provided such fine shall not exceed two hundred dollars, or such imprisonment shall not extend beyond the end of the session.

Sec. 12. Each house of the legislature shall keep a journal of its proceedings, and cause the same to be published as soon after the adjournment as may be provided by law.

Sec. 13. Neither house during the session of the legislature shall, without the consent of the other, adjourn for more than three days, (Sundays excepted,) nor to any other place than that in which they may be sitting.

Sec. 14. The senate when assembled shall choose its officers, and the house of representatives shall choose a speaker and its other officers, and each branch of the legislature shall be the judge of the qualifications, elections, and returns of its members.

Sec. 15. A majority of each house of the legislature shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner as each house may prescribe.

Sec. 16. Each member of the legislature shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the term for which the members are elected when such law passed.

Sec. 17. Bills may originate in either house, but may be altered, amended, or rejected by the other, and all bills shall be read by sections on three several days, except on an extraordinary occasion; two-thirds of the members may dispense with such reading, but in no case shall a bill be passed without having once been read; and every bill having passed both houses shall be signed by the speaker and president in the presence of their respective houses.

Sec. 18. The legislature shall provide by law for filling all vacan-

cies that may occur in either house by the death, resignation, or otherwise, of any of its members.

SEC. 19. The doors of each house shall be open, except on such occasions as, in the opinion of the house, the public safety may require secrecy.

SEC. 20. Every law enacted by the legislature shall embrace but one subject, and that shall be expressed in its title, and any extraneous matter introduced in a bill which shall pass shall be void ; and no law shall be amended by its title, but in such case the act or section amended shall be enacted and published at length.

SEC. 21. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

SEC. 22. The legislature shall meet every two years at the seat of government.

SEC. 23. The legislature shall provide for an enumeration of inhabitants by law. An apportionment of representatives in the legislature shall be provided by law according to population, as nearly equal as may be.

SEC. 24. The legislature shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants or other persons laboring under legal disabilities, by special legislation, but by general laws shall confer such powers on the courts of justice.

SEC. 25. It shall be the duty of all civil officers of this State to use due diligence in the securing and rendition of persons held to service or labor in this State, either of the States or Territories of the United States ; and the legislature shall enact such laws as may be necessary for the honest and faithful carrying out of this provision of the constitution.

ELECTION DISTRICTS.

At the first election holden under this constitution for members of the State legislature, the representative and senatorial districts shall be as follows : The first representative district shall consist of Doniphan county, and be entitled to four representatives ; the second, Atchison, four representatives ; the third, Leavenworth, eight representatives ; the fourth, Brown and Nemaha, one representative ; the fifth, Calhoun and Pottawatomie, one representative ; the sixth, Jefferson, two representatives ; the seventh, Marshall and Washington, one representative ; the eighth, Riley, one representative ; the ninth, Johnson, four representatives ; the tenth, Lykins, one representative ; the eleventh, Linn, two representatives ; the twelfth, Bourbon, two representatives ; the thirteenth, McGee, Dorn, and Allen, one representative ; the fourteenth, Douglas, five representatives ; the fifteenth, Anderson and Franklin, one representative ; the sixteenth, Shawnee, two representatives ; the seventeenth, Weller and Coffee, one representative ; the eighteenth, Woodson, Wilson, Godfrey, Greenwood, and Madison, one representative ; the nineteenth, Breckenridge and Richardson, one representative ; the twentieth, Davis, Wise, Butler, Hunter, and that portion of country west, one representative. In all,

forty-four representatives. The first senatorial district shall be Doniphan county, and be entitled to one senator; the second, Atchison, one senator; the third, Doniphan and Atchison, one senator; the fourth, Leavenworth, three senators; the fifth, Brown, Nemaha, and Pottawatomie, one senator; the sixth, Riley, Marshall, Dickinson, and Washington, one senator; the seventh, Jefferson and Calhoun, one senator; the eighth, Johnson, two senators; the ninth, Lykins, Anderson, and Franklin, one senator; the tenth, Linn, one senator; the eleventh, Bourbon and McGee, one senator; the twelfth, Douglas, two senators; the thirteenth, Shawnee, one senator; the fourteenth, Dorn, Allen, Wilson, Woodson, Godfrey, Greenwood, Madison, and Coffee, one senator; the fifteenth, Richardson, Davis, Wise, Breckenridge, Butler, Hunter, and all west of Davis, Wise, Butler, and Hunter, one senator. The entire number of senators, nineteen.

ARTICLE VI.—*Judiciary.*

SECTION. 1. The judicial powers of this State shall be vested in one supreme court, circuit courts, chancery courts, courts of probate, and justices of the peace, and such other inferior courts as the legislature may, from time to time, ordain and establish.

SEC. 2. The supreme court, except in cases otherwise directed in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: *Provided*, That the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give a general superintendence and control of inferior jurisdictions.

SEC. 3. There shall be held annually, at the seat of government, two sessions of the supreme court, at such times as the legislature may direct.

SEC. 4. The supreme court shall consist of one chief justice and two associate justices.

SEC. 5. The supreme court may elect a clerk and reporter, who shall, respectively, receive such compensation as the legislature may prescribe.

SEC. 6. The State shall be divided into convenient circuits, and for each circuit there shall be elected a judge, who shall, at the time of his election, and as long as he continues in office, reside in the circuit for which he has been elected.

SEC. 7. The circuit courts shall have original jurisdiction of all matters, civil and criminal, within this State not otherwise excepted in this constitution; but in civil cases only where the matter in controversy shall exceed the sum of one hundred dollars.

SEC. 8. A circuit court shall be held in each county in this State twice in every year, at such times and places as may be prescribed by law; and the judges of the several circuit courts may hold courts for each other when they may deem it advisable, and shall do so when directed by law.

SEC. 9. The legislature may establish a court or courts of chancery with original and appellate equity jurisdiction, and until the establish-

ment of such court or courts the said jurisdiction shall be vested in the judges of the circuit courts, respectively; but the judges of the several circuit courts shall have power to issue writs of injunction returnable to the court of chancery.

SEC. 10. The legislature shall establish within each county in the State a court of probate for the granting of letters testamentary of the administration, and orphans' business, and the general superintendence of the estates of deceased persons, and such other duties as may be prescribed by law; but in no case shall they have jurisdiction in matters of civil or criminal law.

SEC. 11. A competent number of justices of the peace in and for each county shall be elected in such mode and for such term of office as the legislature may direct. Their jurisdiction in civil matters shall be limited to cases in which the amount does not exceed one hundred dollars; and in all cases tried by justices of the peace the right of appeal shall be secured under such rules and regulations as may be prescribed by law.

SEC. 12. The chief justice and associate justices of the supreme court, and judges of the circuit court, and courts of chancery, shall, at stated times, receive for their services a compensation which shall be fixed by law, and shall not be diminished during their continuance in office; but they shall receive no fees, no perquisites of office, nor hold any other office of profit or trust under this State, the United States, or either of the other States, or any other power during their continuance in office.

SEC. 13. The chief justice and associate justices of the supreme court shall be elected by the qualified voters of the whole State, the judges of the circuit courts by the qualified voters of their respective circuits, and the judges of the chancery courts shall be elected by the qualified voters of their respective chancery divisions, at such times and places as may be prescribed by law; but said election shall not be on the same day that the election of members of the legislature is held.

SEC. 14. All vacancies in the office of chief justice and associate justices of the supreme court, and judges of the circuit court, court of chancery, and probate court, shall be filled by appointment made by the governor for the time being, but the governor shall, immediately upon the receipt of information of a vacancy aforesaid, order an election to fill such vacancy, first giving sixty days' notice of such election.

SEC. 15. The chief justice and associate justices of the supreme court shall hold their offices for and during the period of six years from the date of their election, and until their successors shall be qualified, and provision shall be made by law for classifying those elected, so that the chief justice or one of the said associate justices of the supreme court shall be elected every two years. The judges of the circuit, chancery, and probate courts shall hold their offices for and during the term of four years from the date of their election, and until their successors shall be qualified.

SEC. 16. Clerks of the circuit courts and courts of probate shall be elected by the qualified electors in each county, and all vacancies in such office shall be filled in such manner as the law may direct.

Sec. 17. The chief justice and associate justices of the supreme court, by virtue of their offices, shall be conservators of the peace throughout the State, the judges of the circuit court throughout their respective circuits, and the judges of the inferior courts throughout their respective counties.

Sec. 18. The style of all process shall be, the State of Kansas, and all prosecutions shall be carried on in the name and by the authority of the State of Kansas, and shall conclude against the peace and dignity of the same.

Sec. 19. There shall be an attorney general of the State, who shall be elected by the qualified voters thereof, and as many district attorneys as the legislature may deem necessary, to be elected by the qualified voters of their respective circuits, who shall hold their offices for the term of four years from the date of their election, and shall receive for their services such compensation as may be established by law, which shall not be diminished during their continuance in office.

Sec. 20. Vacancies occurring in the office of attorney general, district attorneys, clerk of the circuit court, clerk of the court of probate, justices of the peace, and constables, shall be filled in such manner as shall be provided by law.

Sec. 21. The house of representatives shall have the sole power of impeachment.

Sec. 22. All impeachments shall be tried by the senate; when sitting for that purpose the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

Sec. 23. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and of disqualification from office of honor, trust, or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment according to law.

ARTICLE VII.—*Slavery.*

SECTION 1. The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same, and as inviolable as the right of the owner of any property whatever

Sec. 2. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of the owners, or without paying the owners previous to their emancipation a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to the State from bringing with them such persons as are deemed slaves by the laws of any one of the United States or Territories, so long as any person of the same age or description shall be continued in slavery by the laws of this State: *Provided*, That such person or slave be the bona fide property of such emigrants: *And provided, also*, That laws may be passed to prohibit the introduction into this State of slaves who have committed high crimes in other States or

ment of such court or courts the said jurisdiction shall be vested in the judges of the circuit courts, respectively ; but the judges of the several circuit courts shall have power to issue writs of injunction returnable to the court of chancery.

SEC. 10. The legislature shall establish within each county in the State a court of probate for the granting of letters testamentary of the administration, and orphans' business, and the general superintendence of the estates of deceased persons, and such other duties as may be prescribed by law ; but in no case shall they have jurisdiction in matters of civil or criminal law.

SEC. 11. A competent number of justices of the peace in and for each county shall be elected in such mode and for such term of office as the legislature may direct. Their jurisdiction in civil matters shall be limited to cases in which the amount does not exceed one hundred dollars ; and in all cases tried by justices of the peace the right of appeal shall be secured under such rules and regulations as may be prescribed by law.

SEC. 12. The chief justice and associate justices of the supreme court, and judges of the circuit court, and courts of chancery, shall, at stated times, receive for their services a compensation which shall be fixed by law, and shall not be diminished during their continuance in office ; but they shall receive no fees, no perquisites of office, nor hold any other office of profit or trust under this State, the United States, or either of the other States, or any other power during their continuance in office.

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Territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have power to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect or refusal to comply with the direction of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

SEC. 3. In the prosecution of slaves for crimes of higher grade than petit larceny, the legislature shall have no power to deprive them of an impartial trial by a petit jury.

SEC. 4. Any person who shall maliciously dismember, or deprive a slave of life shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

ARTICLE VIII.—*Elections and Rights of Suffrage.*

SECTION 1. Every male citizen of the United States, above the age of twenty-one years, having resided in this State one year, and in the county, city, or town in which he may offer to vote, three months next preceding any election, shall have the qualifications of an elector, and be entitled to vote at all elections. And every male citizen of the United States, above the age aforesaid, who may be a resident of the State at the time that this constitution shall be adopted, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote except in the county in which he shall actually reside at the time of the election.

SEC. 2. All voting by the people shall be by ballot.

SEC. 3. Electors, during their attendance at elections, going to and returning therefrom, shall be privileged from arrest in all cases except treason, felony, and breach of the peace.

SEC. 4. No elector shall be obliged to do militia duty on the days of election, except in time of war or public danger.

SEC. 5. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of his own, or of the United States, or of this State.

SEC. 6. No person employed in the military, naval, or marine service of the United States stationed in this State, shall, by reason of his services therein, be deemed a resident of this State.

SEC. 7. No person shall be elected or appointed to any office in this State, civil or military, who shall not be possessed of the qualifications hereinbefore prescribed for an elector.

SEC. 8. The legislature shall have power to exclude from the privilege of voting, or being eligible to office, any person convicted of bribery, perjury, or other infamous crimes.

SEC. 9. The first general election in this State shall be held on the day and year provided by this constitution, and all general elections thereafter on the day and year provided by subsequent legislative enactment.

ARTICLE IX.—*Finance.*

SECTION 1. The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall from time to time prescribe.

SEC. 2. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the government for each year; and whenever the expenses of any one year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses for such ensuing year.

SEC. 3. For the purpose of defraying extraordinary expenditures, the State may contract public debts; but such debts, in the aggregate, shall never exceed five hundred thousand dollars. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and a vote of a majority of all the members elected to both houses shall be necessary to the passage of such law, and such law shall provide for an annual tax to be levied sufficient to pay the interest of such debt created, and such appropriation shall not be repealed, nor the taxes postponed, until the principal and interest of such debt shall have been wholly paid.

SEC. 4. The legislature may also borrow money for the purpose of repelling invasion, suppressing insurrection, and defending the State in time of war; but the money thus raised shall be applied exclusively to the purposes for which it was raised.

SEC. 5. No scrip, certificate, or other evidence of State debt shall be issued, except for such debts as are authorized by the third or fourth sections of this article.

SEC. 6. The property of the State and counties, both real and personal, and such other property as the legislature may deem necessary for school, religious, or charitable purposes, may be exempted from taxation.

SEC. 7. No money shall at any time be paid out of the treasury except in pursuance of an appropriation by law.

SEC. 8. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the legislature.

ARTICLE X.—*Revenue.*

SECTION 1. All bills for raising revenue shall originate in the house of representatives.

SEC. 2. Taxation shall be equal and uniform, and all property on which taxes shall be levied shall be taxed in proportion to its value, to be ascertained as directed by legislative enactment, and no one species of property shall be taxed higher than another species of property of equal value on which taxes shall be levied.

SEC. 3. The legislature shall have power to levy an income tax, and to tax all persons pursuing any occupation, trade, or profession.

SEC. 4. The legislature shall provide for the classification of the

lands of this State into three distinct classes, to be styled, respectively, Class One, Two, Three, and each of these classes shall have a fixed value in so much money, upon which there shall be assessed an *ad valorem* tax.

SEC. 5. The legislature shall provide for a capitation or poll-tax, to be paid by every able bodied male citizen over twenty-one years and under sixty years of age, but nothing herein contained shall prevent the exemption of taxable polls in cases of bodily infirmity.

SEC. 6. The legislature shall levy a tax on all railroad incomes proceeding from gifts of public lands at the rate of ten cents on the one hundred dollars.

SEC. 7. No lotteries shall be authorized by law as a source of revenue.

SEC. 8. Whatever donations of lands or money that may be received from the general government by this State shall be regarded as a source of revenue subject to a compact made with the United States by special ordinance.

ARTICLE XI.—*Public Domain and Internal Improvement.*

SECTION 1. It shall be the duty of the legislature to provide for the prevention of waste and damage of the public land now possessed or that may hereafter be ceded to the Territory or State of Kansas, and it may pass laws for the sale of any part or portion thereof, and, in such case, provide for the safety, security, and appropriation of the proceeds.

SEC. 2. A liberal system of internal improvements being essential to the development of the resources of the country, shall be encouraged by the government of this State; and it shall be the duty of the legislature, as soon as practicable, to ascertain by law proper objects of improvement, in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements.

ARTICLE XII.—*Corporations.*

SECTION 1. Corporations may be formed under a general law, but the legislature may by special act create bodies politic for municipal purposes, where the objects of the corporations cannot be attained under it; all general laws or special acts enacted under the provisions of this section may be altered, amended, or repealed by the legislature at any time.

SEC. 2. No corporation shall take private property for public use without first having the consent of the owner, or where the necessity thereof being first established by a verdict of a jury, and the value thereof assessed and paid.

SEC. 3. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses.

SEC. 4. The legislature may incorporate banks of deposit and ex-

change, but such banks shall not issue any bills, notes, checks, or other paper as money.

SEC. 5. The legislature may incorporate one bank of discount and issue, with not more than two branches, provided that the act incorporating the said bank and branches thereof shall not take effect until it shall be submitted to the people at the general election next succeeding the passage of the same, and shall have been approved by a majority of the electors voting at such election.

SEC. 6. The said bank and branches shall be mutually liable for each other's debts or liabilities for all paper credits or bills issued representing money; and the stockholders in said bank or branches shall be individually responsible to an amount equal to the stock held by them for all debts or liabilities of said bank or branches, and no law shall be passed sanctioning directly or indirectly the suspension by said bank or its branches of specie payment.

SEC. 7. The State shall not be a stockholder in any bank, nor shall the credit of the State be given or loaned in aid of any person, association, or incorporation, nor shall the State become a stockholder in any corporation or association.

ARTICLE XIII.—*Militia.*

SECTION 1. The militia of this State shall consist of all the able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such citizens as are now, or hereafter may be, exempted by the laws of the United States or of this State.

SEC. 2. Any citizen whose religious tenets conflict with bearing arms shall not be compelled to do militia duty in time of peace, but shall pay such an equivalent for personal services as may be prescribed by law.

SEC. 3. All militia officers shall be elected by the persons subject to military duty within the bounds of their several companies, battalions, regiments, brigades, and divisions, under such rules and regulations as the legislature may, from time to time, direct and establish.

ARTICLE XIV.—*Education.*

SECTION 1. A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, schools and the means of education shall be forever encouraged in this State.

SEC. 2. The legislature shall take measures to preserve from waste and damage such lands as have been, or hereafter may be, granted by the United States, or lands or funds which may be received from other sources, for the use of schools within this State, and shall apply the funds which may arise from such lands, or from any other source, in strict conformity with the object of the grant.

SEC. 3. The legislature shall, as soon as practicable, establish one common school (or more) in each township in the State, where the children of the township shall be taught *gratis*.

SEC. 4. The legislature shall have power to make appropriation from the State treasury for the support and maintenance of common

schools whenever the funds accruing from the lands donated by the United States, or the funds received from other sources, are insufficient for that purpose.

SEC. 5. The legislature shall have power to pass laws for the government of all common schools within this State.

ARTICLE XV.—*Miscellaneous.*

SECTION 1. Lecompton shall be the seat of government until otherwise directed by law, two-thirds of each house of the legislature concurring in the passage of such law.

SEC. 2. Every person chosen or appointed to any office under this State before entering upon the discharge of its duties shall take an oath or affirmation to support the Constitution of the United States, the constitution of this State, and all laws made in pursuance thereof, and faithfully to demean himself in the discharge of the duties of his office.

SEC. 3. The laws, public records, and the written, judicial, and legislative proceedings of the State, shall be conducted, promulgated, and preserved in the English language.

SEC. 4. Aliens who are or who may hereafter become *bona fide* residents of this State, shall enjoy the same rights, in respect to the possession, inheritance, and enjoyment of property, as native born citizens.

SEC. 5. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed by law, and a majority of the votes of the county voting on the question shall have voted in favor of its removal to such point.

SEC. 6. All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 7. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 8. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

BILL OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and established, we declare—

1. That all freemen, when they form a social compact, are equal in rights, and that no man or set of men are entitled to exclusive separate public emoluments or privileges, but in consideration of public services.

2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their

benefit; and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper.

3. That all persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, and no person can of right be compelled to attend, erect, or support any place of worship, or maintain any ministry, against his consent. That no human authority can in any case whatever interfere with the rights of conscience, and that no preference shall ever be given to any religious establishment or mode of worship.

4. That the civil rights, privileges, or capacities of a citizen shall in nowise be diminished or enlarged on account of his religion.

5. That all elections shall be free and equal.

6. That the right of trial by jury shall remain inviolate.

7. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right.

8. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place, or to seize any person or thing, shall issue without probable cause, supported by oath or affirmation. In all criminal prosecutions the accused has a right to be heard by himself or counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witness or witnesses against him; to have compulsory process for obtaining witnesses in his favor, and in all prosecutions by indictments or informations a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed. He shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.

9. That no freeman shall be taken or imprisoned, or dis seized of his freehold, liberties, or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers, or the law of the land.

10. No person, for the same offence, shall twice be put in jeopardy of life, limb, or liberty, nor shall any person's property be taken or applied to the public use, unless compensation be made therefor.

11. That all penalties shall be reasonable, and proportionate to the nature of the offence.

12. No person shall be held to answer a capital or otherwise infamous crime, unless on the presentment or indictment of a grand jury, or by impeachment, except in cases of rebellion, insurrection, or invasion.

13. That no conviction shall work corruption of blood or forfeiture of estate.

14. That all prisoners shall be bailable by sufficient securities unless in capital offences, where the proof is evident or the presumption great, and the privileges of habeas corpus shall not be suspended unless when in the case of rebellion (insurrection) or invasion the public safety may require it.

15. That excessive bail shall in no case be required, nor excessive fines imposed.

16. That no "*ex post facto*" law, nor any law impairing the obligations of contracts, shall ever be made.

17. That forfeitures and monopolies are contrary to the genius of a republic, and shall not be allowed, nor shall any hereditary emolument, privileges or honors ever be granted or conferred in this State.

18. That the citizens have a right, in a peaceable manner, to assemble together for their common good; to instruct their representatives, and to apply to those entrusted with the power of government for redress of grievances or other purposes, by address or remonstrance.

19. That the citizens of this State shall have a right to keep and bear arms for their common defence.

20. That no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

21. The military shall be kept in strict subordination to the civil power.

22. Emigration to or from this State shall not be prohibited.

23. Free negroes shall not be permitted to live in this State under any circumstances.

24. This enumeration of rights shall not be construed to deny or disparage others retained by the people, and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher power herein delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

SCHEDULE.

SECTION. 1. That no inconvenience may arise by reason of a change from a territorial to a permanent State government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, except the bill incorporating banks by the last territorial legislature, shall continue as if no such change had taken place, and all processes which may have issued under the authority of the Territory of Kansas shall be as valid as if issued in the name of the State of Kansas.

SEC. 2. All laws now in force in the Territory of Kansas, which are not repugnant to this constitution, shall continue and be of force until altered, amended, or repealed, by a legislature assembled under the provisions of this constitution.

SEC. 3. All fines, penalties, and forfeitures, to the Territory of Kansas shall enure to the use of the State of Kansas.

SEC. 4. All recognizances heretofore taken shall pass to, and be prosecuted in the name of the State of Kansas, and all bonds executed to the governor of the Territory, or to any other officer of the court in his or their official capacity, shall pass to the governor and corresponding officers of the State authority and their successors in office, and for the use therein expressed, and may be sued for and recovered accordingly; and all the estates or property, real, personal, or mixed, and all judgments, bonds, specialties, choses in action, and

claims or debts of whatever description, of the Territory of Kansas, shall enure to, and rest in, the State of Kansas, and be sued for and recovered in the same manner, and to the same extent, as the same could have been by the Territory of Kansas.

SEC. 5. All criminal prosecutions and penal actions which may have arisen before the change from a territorial to a State government, and which shall then be pending, shall be prosecuted to judgment in the name of the State of Kansas. All actions at law and suits in equity which may be pending in the courts of the Territory of Kansas, at the time of a change from a territorial to a State government, may be continued and transferred to any court of the State which shall have jurisdiction of the subject matter thereof.

SEC. 6. All officers, civil and military, holding their offices under authority of the Territory of Kansas, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the State.

SEC. 7. This constitution shall be submitted to the Congress of the United States at its next ensuing session, and as soon as official information has been received that it is approved by the same, by the admission of the State of Kansas as one of the sovereign States of the United States, the president of this convention shall issue his proclamation to convene the State legislature at the seat of government, within thirty-one days after publication. Should any vacancy occur, by death, resignation, or otherwise, in the legislature, or other office, he shall order an election to fill such vacancy: *Provided*, however, in case of removal, absence or disability of the president of this convention to discharge the duties herein imposed on him, the president *pro tempore* of this convention shall perform said duties, and in case of absence, refusal, or disability of the president *pro tempore*, a committee consisting of seven, or a majority of them, shall discharge the duties required of the president of this convention.

Before this constitution shall be sent to Congress, asking for admission into the Union as a State, it shall be submitted to all the white male inhabitants of this Territory, for approval or disapproval, as follows: The president of this convention shall, by proclamation, declare that on the twenty-first day of December, one thousand eight hundred and fifty-seven, at the different election precincts now established by law, or which may be established as herein provided, in the Territory of Kansas, an election shall be held, over which shall preside three judges, or a majority of them, to be appointed as follows: The president of this convention shall appoint three commissioners in each county in the Territory, whose duty it shall be to appoint three judges of election in the several precincts of their respective counties, and to establish precincts for voting, and to cause polls to be opened, at such places as they may deem proper in their respective counties, at which election the constitution framed by this convention shall be submitted to all the white male inhabitants of the Territory of Kansas in the said Territory upon that day, and over the age of twenty-one years, for ratification or rejection, in the following manner and form: The voting shall be by ballot. The judges of said election shall cause to be kept two poll-books by two clerks, by them appointed. The ballots

cast at said election shall be endorsed, "constitution with slavery," and "constitution with no slavery." One of said poll-books shall be returned within eight days to the president of this convention, and the other shall be retained by the judges of election and kept open for inspection. The president, with two or more members of this convention, shall examine said poll-books, and if it shall appear upon said examination that a majority of the legal votes cast at said election be in favor of the "constitution with slavery," he shall immediately have the same transmitted to Congress of the United States, as hereinbefore provided; but if, upon such examination of said poll-books, it shall appear that a majority of the legal votes cast at said election be in favor of the "constitution with no slavery," then the article providing for slavery shall be stricken from this constitution by the president of this convention, and slavery shall no longer exist in the State of Kansas, except that the right of property in slaves now in this Territory shall, in no manner, be interfered with, and shall have transmitted the constitution, so ratified, (to Congress the constitution, so ratified,) to the Congress of the United States, as hereinbefore provided. In case of the failure of the president of this convention to perform the duties imposed upon him in the foregoing section, by reason of death, resignation, or otherwise, the same duties shall devolve upon the president *pro tem*.

SEC. 8. There shall be a general election upon the first Monday in January, eighteen hundred and fifty-eight, to be conducted as the election provided for in the seventh section of this article, at which election there shall be chosen a governor, lieutenant governor, secretary of state, State treasurer, and members of the legislature, and also a member of Congress.

SEC. 9. Any person offering to vote at the aforesaid election upon said constitution shall be challenged to take an oath to support the Constitution of the United States, and to support this constitution, under the penalties of perjury under the territorial laws.

SEC. 10. All officers appointed to carry into execution the provisions of the foregoing sections shall, before entering upon their duties, be sworn to faithfully perform the duties of their offices, and in failure thereof be subject to the same charges and penalties as are provided in like cases under the territorial laws.

SEC. 11. The officers provided for in the preceding sections shall receive for their services the same compensation as given to officers performing similar duties under the territorial laws.

SEC. 12. The governor and all other officers shall enter upon the discharge of their respective duties as soon after the admission of the State of Kansas, as one of the independent and sovereign States of the Union, as may be convenient.

SEC. 13. Oaths of office may be administered by any judge, justice of the peace, or clerk of any court of record of the Territory or the State of Kansas, until the legislature may otherwise direct.

SEC. 14. After the year one thousand eight hundred and sixty-four, whenever the legislature shall think it necessary to amend, alter, or change this constitution, they shall recommend to the electors at the next general election, two-thirds of the members of each house con-

curing to vote for or against calling a convention, and if it shall appear that a majority of all citizens of the State have voted for a convention, the legislature shall at its next regular session call a convention, to consist of as many members as there may be in the house of representatives at the time, to be chosen in the same manner, at the same places, and by the same electors that choose the representatives; said delegates so elected shall meet within three months after said election, for the purpose of revising, amending, or changing the constitution, but no alteration shall be made to affect the rights of property in the ownership of slaves.

SEC. 15. Until the legislature elected in accordance with the provisions of this constitution shall otherwise direct, the salary of the governor shall be three thousand dollars, and the salary of lieutenant governor shall be double the pay of a State senator, and the pay of members of the legislature shall be five dollars per diem, until otherwise provided by the first legislature, which shall fix the salaries of all officers other than those elected by the people at first election.

SEC. 16. This constitution shall take effect and be in force from and after its ratification by the people as hereinbefore provided.

Done in convention at Leecompton, in the Territory of Kansas, on the seventh day of November, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-second. In testimony whereof, we have hereunto subscribed our names.

Atchison County.

Jun. T. Hereford.
Isaac S. Hascal.
Jas. Adkins.

Owen C. Stewart.
L. S. Boling.
W. T. Spicely.
H. Butcher.

Bourbon County.

H. T. Wilson.
B. Little.

Lykins County.

Jacob T. Bradford.
Wm. A. Haskell.

Leavenworth County.

Jesse Cormell.
John Dale Henderson.
Hugh M. Moore.
Jarret Todd.
Wilburn Christison.
Samuel J. Kookogee.
Lucian J. Eastin.
Wm. Walker.
John W. Martin.
Green B. Redmon.

Jefferson County.

Thos. D. Chiles.
Alexander Bayne.
W. H. Swift.

Johnson County.

G. W. McKown.
Batt Jones.
J. H. Danforth.

Brown and Nemaha Counties.

Cyrus Dolman.
Henry Smith.

Marshall County.

Wm. H. Jenkins.

Douglas County.

W. S. Wells.
Alfred W. Jones.

Riley County.

John S. Randolph.
C. K. Mobley.

Doniphan County

Thos. J. Key.
 Samuel P. Blair.
 James J. Rennolds.
 William Mathews.
 D. Vanderslice.
 Harvey W. Forman.

Linn County.

Milton E. Bryant.

Calhoun County.

Henry D. Oden.

Shawnee County.

Samuel G. Reed.
 Rusk Elmore.

J. CALHOUN,
*President of the Convention and Delegate from the
 county of Douglas.*
 CHARLES J. McILVAINE,
Secretary of the Convention.

LECOMPTON, K. T., *January 14, 1858.*

The within is a true and perfect copy, as compared by me, of the constitution of the State of Kansas, prepared and submitted by the constitutional convention at Lecompton, on the seventh day of November, A. D. 1857.

J. CALHOUN,
President constitutional convention.

ORDINANCE.

Whereas, the government of the United States is the proprietor, or will become so, of all or most of the lands lying within the limits of Kansas, as determined under the constitution; and whereas the State of Kansas will possess the undoubted right to tax such lands for the support of her State government, or for other proper and legitimate purposes connected with her existence as a State: Now, therefore, be it ordained by this convention, on behalf of and by the authority of the people of Kansas, that the right aforesaid to tax such lands shall be, and is hereby, forever relinquished, if the conditions following shall be accepted and agreed to by the Congress of the United States.

SECTION 1. That sections numbered 8, 16, 24, and 36, in every township in the State, or in case either of said numbered sections are or shall be otherwise disposed of, that other lands, equal thereto in value and as contiguous as may be, shall be granted to the State to be applied exclusively to the support of common schools.

SEC. 2. That all salt springs, and gold, silver, copper, lead or other valuable mines, together with the lands necessary for their full occupation and use, shall be granted to said State for the use and benefit

of said State; and the same shall be used or disposed of under such terms and conditions and regulations as the legislature of said State shall direct.

SEC. 3. That five per centum of the proceeds of the sales of all public lands sold or held in trust or otherwise lying within the said State, whether sold before or after the admission of the State into the Union, after deducting all expenses incidental to the same, shall be paid to the said State of Kansas for the purpose following, to wit: two-fifths to be disbursed under the direction of the legislature of the State for the purpose of aiding the construction of railroads within said State, and the residue for the support of common schools.

SEC. 4. That seventy-two sections, or two entire townships, shall be designated by the President of the United States, which shall be reserved for the use of a seminary of learning, and appropriated by the legislature of said State solely to the use of said seminary.

SEC. 5. That each alternate section of land now owned, or which may hereafter be acquired by the United States, for twelve miles on each side of a line of railroad to be established or located from some point on the northern boundary of the State, leading southerly through said State in the direction of the Gulf of Mexico, and on each side of a line of railroad to be located and established from some point on the Missouri river westwardly through said State in the direction of the Pacific ocean, shall be reserved and conveyed to said State of Kansas for the purpose of aiding in the construction of said railroad, and it shall be the duty of the Congress of the United States, in conjunction with the proper authorities of this State, to adopt immediate measures for carrying the several provisions herein contained into full effect.

LECOMPTON, K. T., *January 14, 1858.*

The within is a true and perfect copy of the *ordinance* adopted by the constitutional convention, and submitted as part of the constitution by the convention which assembled at Lecompton on the 5th day of September, A. D. 1857.

J. CALHOUN,
President Constitutional Convention.



[Received on Saturday night, 30th ultimo, from Colonel Clarkson.—J. B.]

LECOMPTON, K. T., *January 14, 1858.*

SIR: The bearer of this, Colonel J. J. Clarkson, will deliver to you an authentic copy of the constitution recently framed by the convention which assembled at Lecompton on the 5th day of September, 1857. By the terms of that constitution, and the action of the people under it, it is made my duty to have the same submitted to the action of the Congress of the United States, with the view of the admission of

Kansas into the Union as an independent State. It is hoped, therefore, that it will be presented by you to the consideration of Congress, with such suggestions as you may think advisable to submit.

The question whether this constitution should contain a clause making Kansas a slave State or not was submitted to a vote of the people of the Territory on the 21st day of December, 1857, and resulted as follows:

For the constitution with slavery.....	6,226
For the constitution with no slavery.....	569
Total vote for the constitution.....	<u>6,795</u>

The votes for the two sides of the constitution is a majority over any vote previously given at any election holden in the Territory.

The constitution is, therefore, by its own requirements, presented to the consideration of Congress, and Kansas asks for admission into the Union as a sovereign State.

I am, very respectfully, your obedient servant,

J. CALHOUN,

President of the Constitutional Convention.

His Excellency JAMES BUCHANAN,

President of the United States.

EXHIBIT No. 7.

An act submitting the constitution framed at Lecompton under the act of the legislative assembly of Kansas Territory, entitled "An act to provide for the taking a census and election of delegates to a convention," passed February 19, A. D. 1857. An act to provide for an election on the submission of the Lecompton constitution.

Be it enacted by the governor and legislative assembly of the Territory of Kansas as follows:

SECTION 1. That an election shall be held on the first Monday in January, A. D. 1858, between the hours of nine o'clock a. m., and six o'clock p. m., at which all the *bona fide* male inhabitants of the Territory of Kansas, over twenty-one years of age, who are citizens of the United States, or who have declared (on oath) their intention to become such, and who shall have resided in said Territory thirty days next preceding said election, and ten days in the county wherein said persons offer to vote, may vote for the ratification or rejection of the constitution adopted by the late constitutional convention at Lecompton, organized under the act of the 19th of February, A. D. 1857, entitled "An act to provide for the taking of a census and election of delegates to a convention." The voting shall be by ballot, as follows: Those voting for said constitution with the article entitled "slavery,"

shall cast a ballot with the words "for the constitution framed at Lecompton, with slavery;" and those voting for the constitution and against the article entitled "slavery," shall cast a ballot with the words "for the constitution framed at Lecompton, without slavery;" and those voting against the constitution shall cast a ballot with the words "against the constitution framed at Lecompton."

SEC. 2. It shall be the duty of the governor of Kansas Territory to appoint three commissioners in each county, whose duty it shall be to establish voting precincts in their respective counties, and appoint three judges of election in each precinct. If, at the hour of opening the polls, the duly appointed judges are not present, or if they shall fail or refuse to act, then the voters assembled shall have power to elect judges to fill the vacancies thus occasioned.

SEC. 3. The commissioners provided for in this act shall, by proclamation, at least five days before the day of election herein provided for, indicate the place at which in their respective counties said election shall be held, and the judges who are to hold the elections in the several precincts.

SEC. 4. Before opening the polls for receiving votes, the judges of election shall be duly sworn to a faithful performance of their duties. They shall provide suitable ballot boxes for the reception of the ballots, and shall appoint two clerks, who shall also be sworn to keep each a faithful record of all the names of persons depositing their votes with said judges. At the closing of the polls the judges shall count and preserve the ballots, and certify at the bottom of the list of voters the number of votes cast in each of the forms prescribed in the second section of this act, which certificate shall be attested by the clerks. One of the list of voters thus certified shall be deposited with one of the commissioners provided for in this act, and the other shall be immediately transmitted to the governor; in his absence, from any cause, to the president of the council or the speaker of the house of representatives of the legislative assembly.

SEC. 5. It shall be the duty of the governor of the Territory, the president of the council, and the speaker of the house of representatives, or any two of them, immediately upon receiving the returns, to examine them and certify to the result of the vote upon the constitution in the manner herein provided, and cause the same to be made known by proclamation, and communicated to the President and Congress of the United States.

SEC. 6. Any officers of an election herein provided for, or of any other general or special election which may hereafter be held in this Territory, upon any question, or for any officers, or any person or persons who shall knowingly inscribe, or permit to be inscribed on the poll books or list of votes, the name of any voter not actually present and voting, or the name of any person not entitled to vote, or shall knowingly certify to a false list of voters, or shall otherwise make or certify to any false returns, knowing the same to be false, shall be deemed guilty of felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not less than one nor more than five years.

SEC. 7. In all offences arising under any of the provisions of this

act the probate judges of the several counties shall have exclusive and original jurisdiction, and shall have the same powers in summoning juries, and in all other matters appertaining to the arrest, trial, conviction, and punishment of such offenders as are now by law vested in the district courts in cases of felony: *Provided*, that if any probate judge shall refuse to issue writs, or in any manner to proceed under this act, the prosecution may be instituted before the probate court of any adjoining county.

SEC. 8. All acts and parts of acts conflicting with the provisions of this act shall be, and the same are hereby, repealed.

SEC. 9. The passage of this act shall be taken and deemed sufficient notice for the holding of said election.

SEC. 10. Any person not legally authorized by the foregoing provisions of this act, who shall cast his vote at the election herein provided for, shall be deemed guilty of felony, and upon conviction thereof shall be fined in any sum not exceeding five hundred dollars, or shall suffer imprisonment not more than one year, or both, at the discretion of the court.

SEC. 11. All officers provided for by the provisions of this act shall receive such compensation as may hereafter be provided by law.

SEC. 12. This act to take effect and be in force from and after its passage.

Approved December 17, 1857.

EXHIBIT No. 8.

"In accordance with the provisions of an act entitled 'An act submitting the constitution framed at Lecompton under the act of the legislative assembly of Kansas Territory, entitled An act to provide for taking a census and election of delegates to a convention,' passed February 19, A. D. 1857, the undersigned announce the following as the official vote of the people of Kansas Territory on the questions as therein submitted on the 4th day of January, 1858:

Counties.	Against the Lecompton constitution.	For the Lecompton constitution, with slavery.	For the Lecompton constitution, without slavery.
Leavenworth	1,997	10	3
Achison	536	4	2
Doniphan	561	1	2
Brown	187	2	
Nebraska	238	1	
Marshall	66		
Riley	287	7	
Pottawatomie	207	2	
Calhoun	249		
Jefferson	877	1	
Johnson	392	2	
Lykins	358	1	1
Larn	510	1	3
Bourbon	268	55	
Douglas	1,647	21	2
Franklin	304		
Anderson	177		
Allen	191	1	4
Shawnee	832	28	3
Osage	463		4
Woodson	50		
Richardson	177		1
Breckinridge	191		
Madison	40		
Davis	21		
Total	10,226	138	24

"Some precincts have not yet sent in their returns, but the above is the complete vote received to this date.

"J. W. DENVER,

"Secretary and Acting Governor.

"C. W. BABCOCK,

"President of the Council.

"G. W. DEITZLER,

"Speaker of the House of Representatives.

"JANUARY 26, 1858."

EXHIBIT No. 9.

WASHINGTON CITY, *February 16, 1858.*

SIR: In reply to your communication of the 15th instant, requesting me to furnish you with such facts as are legitimately connected with the application of Kansas for admission into the Union as a State of this confederacy, I submit the following statement:

From the earliest settlement of Kansas Territory under the organic act, there has appeared a party which, by force or fraud or violence, has exhibited the determination to fasten their own peculiar views upon the institutions of Kansas, regardless of right or law. At the first election for members of the territorial legislature, this factious and lawless party were beaten by the party then known as the pro-slavery party, and, repudiating the legislature thus elected, these factionists and insurgents planted themselves above all law, and manifested a determination to carry out their own purposes irrespective of any legal enactment. In this position they have held themselves to the present day. The Topeka constitution and armed resistance to the execution of law resulted from this position, and, as a matter of course, there has never been any civil government actually enforced in Kansas.

The result of the first territorial election is made the basis for persistent resistance to the laws. It is alleged by the discontents that the result of the first election was controlled by the citizens of Missouri, and that consequently the laws enacted by that legislature were not binding. I need not elaborate this point, for it has been fully discussed before the public.

The report of Judge Douglas to the Senate during the last Congress shows very clearly that a majority of the members of each House were elected without dispute. But I think it important to call attention to one fact bearing on this point with which you may not be familiar. It is that Governor Reeder ordered the census on which this first election was based to be taken, and directed that the States from which the emigrants then in the Territory came should be reported in the returns. This record, as now on file in the secretary's office at Leecompton, shows that a large majority of the inhabitants were from slave States, only three districts of the seventeen in the whole Territory showing majorities of emigrants from the free States. Hence the right of suffrage may have been abused at certain points in the Territory on that occasion, yet I believe the result was in accordance with the will of the majority of the *bona fide* inhabitants of the Territory.

When, under the mistakes of Governor Walker and Secretary Stanton, the democratic or law and order party was *divided* and defeated, and the black republicans obtained control in the existing legislature, then all scruples as to elections and law were laid aside to suit the convenience, interest, and necessity of their new position. Under the provisions of the territorial law they refused to register and vote for delegates to a constitutional convention, for the reason that the enactment was "bogus;" and yet, under the same provisions, they have just now provided for an election of delegates to a convention to pre-

pare for the action of Congress a black republican constitution. The laws are good when they suit their interests and policy ; the same laws are "bogus" and oppressive when they result in submitting to the people of the Territory whether Kansas shall be a slave or a free State. In the one case they cannot yield to law, because they apprehend the result ; in the other they have every confidence in the same law, because they know they will meet with no opposition from the friends of law and order in the Territory.

The first legislative assembly of the Territory provided that, at the next general election for delegate to Congress and members of the legislature, a vote should be taken for and against a convention to adopt a constitution for the State of Kansas. The vote was almost unanimous for such a convention. This expression of the law and order party, taken in connexion with the previously expressed desire of the republican party, showed that the whole people of the Territory were desirous of changing the territorial for a State government. The legislature which was elected at the time this vote was taken, and which assembled on the second Monday of January, 1857, passed an act by which all the voters of the Territory were called upon to express their views on the formation of a constitution, on the presumption that the whole people of the Territory desired to pass into a State government. This fact provided for a registry of voters, an election in June, and a meeting of the delegates in the month of September, 1857, to form a constitution for the State of Kansas. The registry of voters, the election in June last, and the action of the convention are more especially made the subjects of controversy and investigation.

The registry is complained of as unfair and unjust, for the reason that it disfranchises the people of a large number of the counties in the Territory ; and the impression is sought to be made that these disfranchised counties contain a large portion of the people of the Territory. That the registry of voters was, to some extent, imperfect, is conceded, but that the defects have been recklessly magnified is equally true. The complaint is not against the law, but the manner in which it was executed ; and yet its execution would have been complete but for the resistance of those who now make its failure a subject of complaint. The complete and accurate execution of this law depended, in some measure, upon the action of the inhabitants themselves. It was modeled, in some measure, after what was known as the Toombs' bill," and with the aid of all the people could not have failed to accomplish the end in view. But a large number of the republican leaders took ground against its execution, alleging, as was their custom, that it was of bogus origin ; they advised their partizans to withhold their names and refuse to be registered. This spirit of insubordination rendered the duties of the officers exceedingly difficult to execute. In several instances the officers were forcibly driven from the execution of the law, and this by the same men who afterwards make its partial execution the subject of bitter denunciation and complaint.

You are already in possession of the fact that the unorganized counties were attached, for local government purposes, to the neighboring organized counties under the laws of the Territory, and thus, with

few exceptions, the whole people of the Territory had the opportunity of registering their names.

The law provided that every free male inhabitant, a citizen of the United States, in the Territory on the 15th day of March, 1857, and over twenty-one years of age, should be permitted to register his name, and thus qualify himself to vote at the June election for delegates to the constitutional convention. This law of the territorial legislature, like all others, was repudiated and resisted by the abolition or black republican leaders. They absolutely refused to permit a registry in every part of the Territory, or to acquiesce in the provisions of what they called a bogus law. This resistance to the law was open and public, and hence the officers entrusted with the registry of votes were unable fully and completely to discharge their duties. As conclusive proof of this, the judges of probate of Franklin, Anderson, and Allen counties, three of Governor Walker's disfranchised counties, were forcibly prevented from executing the law, and upon their attempting to do so were driven out of their counties with violence, and threatened with death if they persisted. The registry, therefore, was not complete, and its failure was not attributable to either the law or the officer, but to the stubborn refusal of the abolitionists and republicans to comply with the legal provision. Every man in the Territory could have registered his name and voted at the June election for delegates. That he did not do so was his own fault. He was not *disfranchised* either by the law or the officer, but by his own stubborn refusal to avail himself of the benefits of the law. He refused to exercise his proper legal rights, and for this refusal Governor Walker and Secretary Stanton put in the plea that he was disfranchised. Notwithstanding the obstacles so encountered by the officers, some nine thousand persons were registered, and were thus qualified to vote for delegates to the convention. And when it is considered that at the fall election, in October, that less than 12,000 votes were polled, after an excited contest, (embracing most of the emigrants,) every one will perceive that the March registry must have embraced most of the voters of the Territory. Many of the counties called disfranchised by Governor Walker contained no population, and had never been organized; and all of them united did not probably contain a thousand votes. Such of them as were organized could have had a registry of voters if they had desired it. As it was, Mr. Secretary Stanton, then acting governor, took the returned registry and acted upon it, and apportioned the delegate representation in the several counties. The law provided that the convention should consist of sixty delegates. These sixty delegates Mr. Stanton apportioned to the counties where the voters had been registered. It seems to me, if a large proportion of the people were disfranchised, that then would have been the time for his patriotism to have exhibited itself and suggested some mode of relief. He however acted correctly and in strict conformity with law; and it was until his sympathies were subsequently awakened to the sufferings and wrongs of the poor republicans and abolitionists, who, in his estimate, were "nineteen in twenty" of the population, that this terrible wrong of disfranchisement was discovered and published to the world. There is neither good sense, truth, or honesty in all this declamation about disfran-

chised people and counties. The truth is, that the whole republican party refused to register their names and vote; and when told by their friends abroad that they had no right to complain of the composition and action of the constitutional convention, Messrs. Walker and Stanton put in this idle plea about disfranchisement, and came up here and presented it with as much gravity as if it were really entitled to consideration.

At the election of delegates in June last there was no contest, and but few votes polled. Not one in three of the democratic party visited the polls. The republicans and abolitionists all refused to vote. Without a contest men cannot be induced to vote any where, for, as the result is known beforehand, men prefer to remain at home, in attendance upon their own business, rather than lose time and money where nothing is to be gained by it.

The result of the election was satisfactory to the whole democratic party of the Territory, and with very few exceptions the labors of the convention were approved by that party on the 21st of December last.

The failure of the convention to submit the whole constitution to a vote of the people has been the subject of constant and ungenerous criticism, and it is due to myself to say that, while I differed with a majority of my colleagues, and voted to submit the whole constitution to the people, I never doubted the right of the convention to make and adopt a constitution and send it up to Congress without the submission of any part of it to a popular vote.

I met Acting Governor Stanton in Lecompton some two or three weeks after he arrived in Kansas in April last. In a conversation at my office on the constitution, and the manner of submitting it to a vote of the people, he informed me that, with the exception of the question of slavery, there could be no serious difference of opinion among the people; that the question of slavery was the only one necessary to be submitted to a vote of the people; that the constitution about to be formed by the convention, with the exception of the question of slavery, should be sent to Congress for approval without submission. These same views had been previously expressed by Mr. Stanton in a speech at Leavenworth city; and that the convention subsequently adopted the plan of which Mr. Stanton was the early advocate should not be peculiarly offensive to him.

It is true that when Governor Walker arrived in Kansas he assumed a different position; but his isothermal argument, his planting himself against slavery in the Territory, his casting the weight of his great personal and official influence in the scale in favor of making Kansas a free State, lost him, at once, two-thirds or three-fourths of the democratic party, and made every effort of his towards controlling the action of the convention utterly powerless. Mr. Stanton had given direction to the public sentiment, and Governor Walker could never change it. If Governor Walker had never appeared in Kansas there would have been no difficulty. The whole people would have assented to Mr. Stanton's proposition and voted for Kansas as a slave State or a free State under the proposition submitted by the convention. No man in Kansas ever spoke or thought of any other issue

than that presented by the question of slavery. There is no material difference between free State constitutions, especially in those which have been framed or modified in the last quarter of a century. A free State constitution of this day is an instrument well understood in all its parts. The free State side of the Lecompton constitution is as good a free State constitution as can be found in the Union. It differs but slightly from the Topeka constitution, or of any of the free States north or west. The great question, and the only question, was that of slavery. The people of Kansas, but for the opposition of Governor Walker, would most willingly have determined the question upon the proposition submitted by the convention. The New York Tribune, well known as the leading organ of the republican party, in several of its numbers, took the ground that if the Lecompton convention desired to settle, fairly and forever, the vexed question of slavery, that it could be done by submitting the Topeka and Lecompton constitutions, a free State and slave State constitution, to the fair vote of the people, and allow them to determine as between the two.

This was practically done, for the convention submitted to the people substantially the Topeka and a slave State constitution. The republicans, influenced to a great extent by Governor Walker, refused to vote for their free State side of the constitution, and consequently the slavery side was adopted.

It is alleged that the constitution does not embody the will of the majority of the people, and for that reason the State should not be admitted. But it is not pretended that a majority have not manifested an earnest desire to change from a Territorial to a State government, or that a large majority of the people have not to some extent recognized the new constitution. It is true that, if the *ex parte* vote cast by the republicans on the fourth of January against the constitution, could be treated as reliable, and as affecting the formation of the constitution, the objection would be forcible; nor do I pretend to say that, if all the inhabitants had come to the polls on the 21st of December and voted on the slavery article, the result would have been in favor of the slavery side of the constitution; but this I do know, that the ascendancy of the republicans in Kansas, if they have the ascendancy at all, is not by any means so complete as they pretend. They report over 10,000 votes against the constitution at the election on the 4th of January last, and I should have been no more surprised at a report of 15,000 or 20,000; but for State officers their highest vote, including the 631 illegally cast under Stanton commissioners, and reported to Governor Denver, is but 7,059; whilst the vote for the two sides of the Lecompton constitution on the 21st day of December was 6,794, and the legally cast democratic vote for State officers on the 4th of January is 6,581, as counted on the 14th of January.

I am perfectly aware of the broad allegations of fraud which have been made against the vote of the 21st of December, whilst but little has been said in relation to the frauds committed at the territorial election against the constitution on the 4th of January. I do not care to trouble you with these details, for I know they have no proper bearing upon the question of the legality and regularity of the appli-

cation of the Territory for admission as a State ; but the vote against the constitution in Leavenworth and other counties looks quite as much like fraud as could by possibility have been committed under any circumstances whatever.

There were nearly 14,000 votes polled for State offices under the constitution, exhibiting almost an unanimous desire on the part of the people of Kansas to be relieved, by the establishment of a State government, from the vexations and troubles which have surrounded them since the organization of the Territory.

They know that, if Kansas be admitted into the Union as a State, all redress of grievances and shaping of their own institutions will be left on their own hands. They have no idea that the Missouri compromise was repealed to enable them to determine any other than the slavery question ; all other questions were within their control before. This question they have had, and will continue to have, an opportunity to control, and they can see in the continuation of the struggle nothing but strife and loss and vexation to themselves for the benefit of political agitators, who neither share their troubles nor participate in their losses.

These are the considerations which pertain to the constitution, the action of the people of Kansas, and the action sought from the Congress of the United States. But alleged frauds at the election on the 4th of January, under the constitution, and my own action, or supposed action, upon the returns of that election, are made to bear upon the application of Kansas for admission as a State. I have said in this all that I can think belongs to the subject as presented to Congress, and shall say through the public press what I know of the election of January 4, under the constitution, and what will be my action thereon, with which matters I cannot perceive that Congress has anything to do.

Respectfully, your obedient servant,

J. CALHOUN,

President of Constitutional Convention of Kansas.

Hon. JAMES L. GREEN,
United States Senate.

THE MINORITY REPORT OF THE SELECT COMMITTEE OF FIFTEEN.

The undersigned members of the Select Committee of Fifteen of the House of Representatives appointed to investigate certain matters in relation to Kansas, disagreeing with the views and conclusions of the majority in the written statement submitted by them, will, with the permission of the House, present a counter statement.

After a protracted struggle in the House, commencing on Friday, February 5, the following resolution was adopted :

“ Resolved, That the message of the President concerning the constitution framed at Lecompton, in the Territory of Kansas, by a convention of delegates therein, and the papers accompanying the same, be referred to a select committee of fifteen, to be appointed by the Speaker; that said committee be instructed to inquire into all the facts connected with the formation of said constitution, and the laws under which the same was originated, and into all such facts and proceedings as have transpired since the formation of said constitution having relation to the question of propriety of the admission of said Territory into the Union under said constitution, and whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas; and that the said committee have power to send for persons and papers.”

The circumstances under which this order of the House was passed are fresh in our memories, and well calculated to make an impression upon the country. The subject of Kansas affairs from the start has been surrounded with many difficulties. The President, who is charged by the Constitution to give to Congress information from time to time, has essayed to perform this duty, but with so little success that the House deemed something more required—so little in fact that of five governors selected by himself, or his predecessor, for the Territory of Kansas, there is not one that is not now at open issue with the President's statements and conclusions; and these persons, having all been deprived of office by executive power, guilty of the delusion of carrying out their written instructions instead of the higher law of party, may have been referred to among those described in the late message as “in a state of rebellion against the government under which they lived.”

Some of the men who have held the office of governor of Kansas have been statesmen of ripe experience, and from their official relation and personal observation were as well qualified to present a statement of the true condition of affairs as any men in the nation, from the highest to the lowest. The statements of these men cannot be invalidated by charging *them* with a complicity in “abolition movements.” Their birthplaces and party associations will challenge all allowances for any leaning as against the President of their choice. If they testify against him, it must be on compulsion. While we

listen to the eager statements and elaborate arguments of the President, venerable for his age and length of service, we ought not to turn a deaf ear to the reluctant facts and logic extorted from those in the full vigor of manhood, and with the largest opportunities for accurate information. But the majority of the committee have promptly defeated all resolutions presented to obtain further evidence from this source, although the witnesses were at hand, and might have been examined with little delay and little expense. The majority appear to have adopted a fixed line of argument in behalf of the Lecompton constitution, and all facts which might obstruct that line of argument they appear to have regarded as irrelevant; therefore unnecessary to them, and, if so, useless to the minority.

The House decided we should inquire into all the facts, proceedings, and laws relating to the propriety of the admission of Kansas into the Union, and, also, whether the constitution is "acceptable and satisfactory to a majority of the legal voters;" but the majority assume that there are no facts or proceedings embraced which are not already in possession of the House—resting the case, not upon its equity or propriety, but upon the allegation that the record is complete, and refuse to change or set it aside for any fraud, whether proven or not. They seem to assume there is a bond which, *prima facie*, gives to them the pound of flesh, and, refusing all inquiry into its validity, inexorably demanded the penalty, and to be cut of nearest the heart of Kansas. This assumption, like the refusal to submit the constitution of Kansas to a full and fair vote of the people, is a confession that a thorough investigation would show this extraordinary document was not legally formed, made, or adopted; and that, instead of being acceptable and satisfactory to a majority, it is hated, scorned, and will be resisted by the people of Kansas to the last extremity, and therefore ought to be rejected. With the power accorded to the committee by the House to send for persons and papers, we might have established this beyond all cavil, though now established beyond all legal or moral doubt; but the minority, at the first step, were voted down by the majority, as they were upon all the main issues or resolutions presented save one, which called for a statement made by John Calhoun of little consequence and no legal authority, and supposed to be favorable to the views of the majority. This statement, the records show, the majority were ready to receive and have used—loose, irresponsible, and *ex parte* as it was—while they refused to summon the same witness, and have him examined under the sanction of an oath. Can it be possible they would have us give credit to the statements of a witness whose oath they decline?

If this witness had been sworn, he would have been called upon to testify whether the constitution had not been subjected to as great manipulation while in his hands as the returns of Delaware Agency. There was, at the time, as much mystery hanging over his non-publication of the constitution as there has been ever since over his non-publication of the returns of the January election. Proved to be a *particeps criminis* in one fraud, where he was not even less suspected than the other, we are not satisfied that the Lecompton constitution,

as presented, is the one, in all its parts, which was agreed to by the delegates *while assembled* in convention.

The action of the majority of this committee will doubtless be explained by themselves, but it does not appear to us as defensible, nor can we believe it will prove more acceptable and satisfactory to the House than was the action of the Lecompton convention to a majority of the people of Kansas. Instead of investigating the facts for the action of the House, the majority tender their *views*, and these they ask the House, without investigation, to adopt. Foreign as we conceive this to be from our duty, we are compelled to follow the example thus set.

The questions of inquiry upon the application of new States have been—

1. *In relation to the sufficiency of population.* Here, while this may be conceded, we emphatically deny that any such sufficiency have had any part or lot in the Lecompton constitution.

2. *Is the constitution republican in its form?* This we deny, on the ground that no constitution can be republican which was neither made by nor embodies the will of the majority. The third query, as propounded by Mr. Buchanan in the case of Michigan, is—

3. *“Are they waiting to enter the Union on the terms we propose?”* No! Fifteen thousand voters can be counted to-day in Kansas who look upon the terms with abhorrence; and if there be twenty-five hundred in favor of it, they have only said so when coupled with the land grab in the ordinance, which we do not “propose.” There is no authority for saying that any body in Kansas is *waiting to enter* on our terms. The majority of this committee slur this inquiry, and place instead another, touching “the regularity of the proceedings.” *That* is equally fatal to their argument, as it suggests the need of an enabling act on the part of Congress. No such act was passed.

In the case of Michigan, already referred to, Mr. Buchanan said: “No senator will pretend that their Territorial legislature had any right whatever to pass laws enabling the people to elect delegates to a convention for the purpose of forming a State constitution. It was an act of *usurpation* on their part.”

So far as “regularity” is concerned, the action of the Territorial legislature is illegitimate without the authority of Congress. Irregularities are indeed overlooked when the people are waiting to enter the Union on the terms proposed, and when the constitution embodies the sense of the majority, but never otherwise; and ten times never when the “regularity” is confined to that hammered out of persistent links of fraud.

The President, in his recent message, assumes to draw a dividing line between the parties in Kansas, styling one as “loyal” and the other as “enemies to the Territorial government,” meaning thereby to cast odium upon those who prefer a *free State* constitution to the constitution *with slavery*. It is not a little remarkable that all the proceedings of the pro-slavery party in Kansas, in the eye of the President, are marked by entire *regularity*, and without any “official information,” or sign of fraud or violence, while the free State party cannot give vent even to the “still small voice” of petition without eliciting an Executive proclamation of insurrection. While he elevates

and dignifies the minority with the name of the "people," the majority are, in his opinion, rebels, guilty of a "treasonable pertinacity," and can only be restrained "from their assaults by the troops of the United States." These are grave imputations.

But we deny all of the executive charges or insinuations against the people of Kansas. An *enemy* of the government is one who plots its overthrow in order to establish some other *form* of government. A *rebel*, or revolutionist, is one who seeks *by force of arms* to accomplish such a purpose. The people of Kansas have aimed at nothing of this sort, and repel the imputation. They are not disloyal to any government to which they owe allegiance. They reverence the principles of the old and *once-honored* Declaration of Independence, and are resolved to maintain them; that "all governments derives their just powers from the consent of the governed."

Whether Congress, in the Kansas and Nebraska act, intended to abdicate its power over the Territories in favor of "*squatter sovereignty*," or not, certainly by proclaiming *non-intervention* it never conferred upon the Executive the power of intervention "to form and regulate their domestic institutions." Yet to this complexion has it come, from evidence already on the record, and which might have been made still more ample and complete had the committee been allowed to send for persons and papers.

From the foundation of the government until the unfortunate act of Congress, which, artfully dodging an open repeal, declared a former act known as the Missouri compromise "inoperative and void," the power of Congress over Territories had always been claimed and exercised. During all this time no turbulence or rebellion was charged upon the people of any Territory, and it is now for the first time hinted that a Territory has "occupied too much of the public attention." In all this time it has never been pretended that the people of a Territory or State about to frame a constitution had not perfect liberty to do it in their own way. The practical results in Kansas prove the power and the sovereignty of the people *there* as "inoperative and void" as that of a neutral Congress. But the power disowned and turned loose by Congress has been seized by the Executive, whose frowns or smiles, "dragoons and a battery," or official patronage, *localize* and subdue all opposition.

The Lecompton constitution, if it had been submitted to the ratification of the people, and had received the assent of an indisputable majority, could not supersede a true and legal territorial government, and would be no better than so much waste paper without the sanction of Congress by the admission of Kansas as a State. But the President declares that Kansas "is at this moment as much a slave State as Georgia and South Carolina." Believing this, and supported by "the highest judicial tribunal known to our laws," the President, at this precise moment, and not before, discovers that "the affairs of this Territory have engrossed an undue proportion of public attention." There is some "excitement," to be sure, but he is for having it "localized," and thus "let it die away." We can perceive no reason for faith in the remedy of the President, only on the principle that it is strong enough to *kill or cure*. Mr. Stanton declares: "If Congress

will heed the voice of the people, and not force upon them a government which they have rejected by a vote of four to one, the whole country will be satisfied, and Kansas will quietly settle her own affairs, without the least difficulty, and without any danger to the confederacy."

Governor Walker is not less emphatic in asserting that, "even as late as the 3d of July, 1857," "none contended that slavery could be established there," and in denouncing "the extraordinary paper called the Lecompton constitution."

Here are widely discrepant statements, to be weighed calmly, as they may or may not rest on a solid foundation of truth. This committee was created expressly to elucidate such disputed points as these, "to inquire into all the facts," and whether the constitution is "acceptable and satisfactory to a majority of the legal voters of Kansas." To stop short of this would be to disobey the order of House—an offence, when committed by an individual, punished as a contempt of the authority and dignity of the House. Undoubtedly a full and fair investigation would bring out more conclusively facts showing that the constitution was regarded at the time it was framed, and is now regarded by a majority of the people, then and now, with the fiercest hate, and the refusal of the majority of the committee to enter at all into such an investigation is a significant confession of the fact. If they had nothing to fear from it, why shun it? They say it would be "impracticable." That is not our opinion; but it is our opinion the facts would be "impracticable."

But history has made up its record of *facts*, of *laws*, and of *proceedings*; and whatever special pleading may undertake to rule out as irrelevant, enough will stand to show that the Lecompton constitution can be imposed upon Kansas only by a greater outrage than any in the long series which the people of that Territory have been forced to endure.

The President of the United has transmitted the "extraordinary paper called the Lecompton constitution" to the Senate, the fruit of a convention organized on a popular vote of less than one-half of the Territory, and of that half only a small fraction of the people appeared at the polls. In the letter of Governor Walker to Mr. Cass, he says:

"Surely, then, it cannot be said that such a convention, chosen by scarcely more than one-tenth of the present voters of Kansas, represented the people of that Territory, and could rightfully impose a constitution upon them without their consent. These nineteen counties, in which there was no census, constituted a *majority* of the counties of the Territory; and these fifteen counties, in which there was no registry, gave a *much larger vote* at the October election, even with the six months' qualification, *than the whole vote given to the delegates who signed the Lecompton constitution on the 7th November last.*"

The law was imperative, and a non-compliance, in whole or in part, as to taking the census or the registry, is fatal. The law authorizing the election of delegates prohibited all persons not registered from voting. "At such election no person shall be permitted to vote unless his name shall appear in such corrected list." (Section 8.) This and other important requirements of the law were notoriously not com-

plied with. The citizens of Anderson county, instead of resisting a census and registration, when that duty was neglected by the judge of probate, caused it to be taken themselves ; and, upon the advice of Governor Walker, they elected delegates to the convention. We have it not only upon the authority of Governor Walker, but upon that of both reports made by the committee on credentials in the Lecompton convention, that—

“The people of Anderson county are in no way responsible for the failure of being represented in the convention, in non-conformity to the Kansas statutes.”

Yet these delegates were refused their seats, and the citizens of Anderson county, by their memorial, implore Congress not to bind a constitution upon them, in the forming of which they were entirely shut out, and that for no fault of their own.

The apportionment, upon which all the vexed questions might turn, rested upon the strict execution of the law. If it be admissible to exclude *one* county, then all but one may be excluded. If two thousand voters may be disfranchised, then all but two thousand may be disfranchised. We repeat, this omission, no matter by what neglect, is fatal. The message of the acting governor of Kansas, dated December 8, 1857, declares :

“At the election which followed, in pursuance of the law, (providing for the convention,) only two thousand two hundred persons, being less than one-fourth of the registered voters, participated in any manner in the choice of delegates, either by voting for those elected or for other persons. The average vote in favor of the successful candidates was about eighteen hundred.”

The number of delegates was sixty, and this would allow an average of thirty voters, good and bad, to each delegate. Surely a small fragment of the people to be allowed to control the destiny of a State ! As it was however expected by the people that an opportunity would be had to ratify or reject the constitution to be made by these delegates, their election might be justly regarded with indifference. They of course received all the votes of the pro-slavery men in the Territory. Yet the registry showed at that time there were 9,251 voters in the counties registered, and the omission in these counties were confessedly large. Of these sixty delegates but forty-three participated in the work of the convention. Sessions were held without a quorum, and the yeas and nays often show that but few above thirty were present. It is understood, and not denied, that but twenty-eight of these—less than half of a full house of sixty—decided the pro-slavery or free State question ; and upon the question of submission of their work to the will of the people, the pro-slavery party carried the point by a majority of two votes only. It is quite in keeping with the character of this body and its officers to find the journal of its proceedings for the last days missing.

Upon such a slender foundation as this rests the constitution made at Lecompton. A large majority of the people did not vote for the delegates, and so many of the delegates either refused to have anything to do with the convention, or, being present, voted against the most obnoxious provisions inserted in the constitution, that it was in fact

the product of a minority of the delegates, elected by a minority of the people. Thus, first, the number of the people who *could* vote is reduced; second, the number who *did* vote was reduced; third, the number of delegates elected, but who did not appear, is reduced by the absenteeism of nearly one-third, who regarded the whole business as a shameless fraud; fourth, those who appeared in the convention, voting with the majority, were reduced to less than half of its legally constituted numbers on all test questions. The will of the people was here so successively reduced and diluted step by step with fraud, that nothing but a homœopathic quantity is left; and those who represent that *small dose* may, "by death, emigration, or change of opinion," no longer do so.

The character of this convention was disclosed in almost their first act, which was the election, "by acclamation," of a Mr. Hand for their clerk, one of the detected ballot-box stuffers, who had just made the fraudulent returns for the county of Oxford. It is clear they did not shrink from rewarding with honor one the public sense regards as forever linked with infamy, and that they held this Mr. Hand their fit associate and an instrument of obedience to that high command, "Let not thy left hand know what thy right hand doeth."

We claim that this convention could not make a valid constitution—

1. Because, whatever inherent power the people may possess, Congress refused all legal authority to the territorial legislature to call a convention, though urged by President Pierce.

2. Because the legislature which created it was itself the creature of fraud and foreign invasion, and that this usurpation was never consummated by the acquiescence of the people.

3. Because the act of that legislature, passed February 19, 1857, to "provide for taking the census and the election of delegates to a convention," was never fairly executed. The census was incomplete, the registry was incomplete, the apportionment was incomplete, and the number of delegates assembled was incomplete.

4. Because, through the nefarious apportionment, the threatened exclusion from the polls, unless coupled with the payment of a tax to support a government imposed upon them by high-handed outrages, through lack of all confidence of protection at the polls from violence and fraud, the majority did not and could not participate in the election of delegates, and it was thus composed of a mere faction, entitled to no regard.

5. Because the most noted delegates pledged themselves to submit their work to the ratification or rejection of the people, thereby securing their election, afterwards betrayed their trust, and did not so submit the constitution.

6. Because it is not, in fact, the work of a majority of the whole convention.

7. Because the legislative, judicial, and executive powers conferred upon John Calhoun transcended the power of the convention, and their exercise was entirely illegal, and therefore null and void.

The constitution was partly submitted, to be partially voted upon, to the people of Kansas December 21, 1857, and 6,143 votes were counted for the "constitution with slavery," and 569 votes for "constitution with no slavery," leaving a majority of 5,574 for the "con-

stitution with slavery." But against this we have the statement of C. W. Babcock, president of the council, and G. W. Deitzler, speaker of the house, officers of the territorial legislature, invited by John Calhoun to be present on the occasion of opening the returns, January 18, 1858, who say :

"More than one-half of this majority was cast at those very sparsely-settled precincts in the Territory, two of them in the Shawnee Reserve, on lands not open for settlement, viz :

"Oxford, Johnson county.....	1,266
"Shawnee, Johnson county.....	729
"Kickapoo, Leavenworth county.....	1,017
	<hr/>
"Total.....	3,012
	<hr/>

"From our personal knowledge of the settlements in and around the above places, we have no hesitation in saying that the great bulk of these votes were fraudulent ; and taking into view other palpable but less important frauds, we feel safe in saying that of the whole vote polled not over 2,000 were legal votes, polled by citizens of the Territory." ; The board of commissioners of the Kansas legislature have fully developed the fraudulent and worthless character of this vote, to which we refer elsewhere.

The same officers of the legislature, with J. W. Denver, secretary and acting governor, certify, January 14, 1858, that there were cast, at the election held on the 4th of January, 1858, 10,226 votes against the constitution formed at Lecompton, 133 votes for it with slavery, and 24 votes for it without slavery. This included only the votes received up to that time, and the total was afterwards increased to 11,000. We have also the *protest*, presented to the House, February 1, 1858, by the delegate from Kansas, of the legislature of the Territory, and the legislature whose authority is least assailed.

"PREAMBLE AND JOINT RESOLUTIONS in relation to the constitution framed at Lecompton, Kansas Territory, on the 7th day of November, 1857.

Whereas a small minority of the people living in nineteen of the thirty-eight counties of this Territory availed themselves of a law which enabled them to obstruct and defeat a fair expression of the popular will, did, by the odious and oppressive application of the provisions and partisan machinery of said law, procure the return of the whole number of the delegates of the constitutional convention recently assembled at Lecompton : * * *

"And whereas a minority, to wit, twenty-eight only of the sixty members of said convention, have attempted, by an unworthy contrivance, to impose upon the whole people of this Territory a constitution without consulting their wishes and against their will : * *

"Be it therefore resolved, by the governor and legislative assembly of Kansas Territory, That the people of Kansas being opposed to said constitution, Congress has no rightful power under it to admit said Territory into the Union as a State, and the representatives of said people do hereby, in their name and on their behalf, solemnly protest against such admission."

At the recent session of the Territorial legislature an act was passed providing for a new convention to form a constitution in accordance with the will of the people. An act also passed one branch of the legislature to prevent any person from carrying into effect and operation the Lecompton constitution. The regularity and the import of these proceedings admit of no doubt.

In addition, we have the *official* authority of the President himself to show that the constitution pretended to have been legally made at Lecompton is not one which is satisfactory to a majority of the people of Kansas, who, he says, would "long since have subverted the territorial government had it not been protected from their assaults by the troops of the United States." While they would have done all this "long since," they are no less resolute now, as "up to this moment," he says, "the enemies of the existing government *still adhere* to their revolutionary plans and purposes with treasonable pertinacity." Why should they *subvert* the territorial government, and still *adhere* to this purpose, but to avoid the Lecompton constitution?

If men are presumed to go to the polls as equals, we have five times the authority for rejecting the Lecompton constitution to what we have for receiving it. No man, probably, in the House, or out of it, will pretend that this convention represents the will of the majority of the people of Kansas. Even John Calhoun does not pretend that. If they are in rebellion, it is a rebellion formidable to tyrants only. To impose such a constitution upon such a people by superior force would be a tyranny akin to the subjugation of Poland and Hungary, and would shame us into silence on that topic forever. To impose it would not only be a fraud upon the people, but a gross violation of the Kansas-Nebraska act, and therefore, in the eyes of some, a greater crime. It would be a fraud, because the convention, pledged to do exactly the reverse, prepared their work so as to exclude the majority from the polls, if they would not first swear to support that which they could have no honest intention of doing. The test is as follows:

"SEC. 9. Any person offering to vote at the aforesaid election upon said constitution shall, if challenged, take an oath to support the Constitution of the United States, and *to support this constitution*, under penalties of perjury under the territorial laws."

Before the section of the constitution which was submitted could be voted upon at all, the person must take an oath to support the constitution itself, under the penalties of perjury! This was not the only obstacle to be encountered. It will be seen by reading the 7th section of the schedule that it set out with very broad declarations, which tapered off to a narrow point at the end. Thus: "Before this constitution shall be sent to Congress, asking for admission into the Union as a State, *it shall be submitted to all the white male inhabitants of this Territory for approval or disapproval.*"

Certainly, the people of Kansas could not complain of that, nor of its further reiteration, as follows: "At which election, the constitution framed by this convention shall be submitted to all the the white male inhabitants of the Territory of Kansas in the said Territory upon that day, and over the age of twenty-one years, for *ratification*

or rejection, in the following manner and form. The voting shall be by ballot."

But now comes a contraction. Notwithstanding all the unstinted and solemn assurance about approval or disapproval, ratification or rejection, it is to be at last submitted in just this form and no other, viz: "The ballots cast at the said election shall be endorsed 'constitution with slavery,' or 'constitution with no slavery.'" Here all other provisions of the constitution, including the monstrous apportionment based on counties having manufacturing establishments ready upon the shortest notice to turn out 1,266 votes with only 33 voters, were *ratified* and *approved* by the convention, and made irrevocable "to all the white male inhabitants," at a single leap, and even the slavery question was not squarely nor fairly submitted. If the "constitution with no slavery" had been adopted, it was only a delusion, as the schedule still goes on to say: "Except that the right of property in slaves now in the Territory shall in no manner be interfered with." Vote as they pleased, and the constitution must be adopted, and one vote in its favor could not be overcome by a hundred thousand against it. The Wandering Jew, or Mr. Hand, with a single ballot, could fix its legality so that the *protest* of all the people of Kansas, though as numerous as all the tribes of Israel, would be ruled out by the Executive, and especially by a majority of this committee, as irrelevant and of no sort of consequence. Vote as they pleased, and slavery was to remain there still, never to be diminished, but subject to all the laws of natural increase; and the President informs us that Kansas is now no less a slave State than Georgia or South Carolina. Ratified or not, approved or not, the "constitution with slavery" was to be fastened forever upon the Territory.

We were directed by the order of the House to inquire into "all the facts" connected with the formation of the Lecompton constitution, into all subsequent proceedings, and as to "whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas."

This not only admits that the negative of the last branch of the proposition would be fatal to the validity of the constitution, but admits that the documentary evidence in the possession of the House is insufficient to prove the affirmative, and further recognizes the propriety of an inquiry into the fact whether a majority of the people of Kansas have made their will known and felt, as they were to be "perfectly free" to do. This right is one conceded by the theory and practice of our government, which no more admits the right of minorities, with a "treasonable pertinacity," to control majorities in the formation of constitutions than in popular elections. To suppose otherwise is an absurdity, especially so far as Kansas is concerned, as the organic act declares the people there "perfectly free to form and regulate their domestic institutions in their own way." Congress is thus bound by its own honor to see that its power is not encroached upon, and that the domestic institutions of Kansas *are in fact* formed and regulated by the people of Kansas, not by usurpers at home or abroad, and not by the Executive nor by the Supreme Court. Even these last are as much intruders as any border ruffian invaders.

By the Missouri compromise, a division line established in 1820, and forced upon the free States mainly by southern votes, Kansas was to be free, and slavery was "forever prohibited" in all the territory now embraced in Kansas and Nebraska. By this division the south gained the admission of Missouri as a slave State, and have greatly increased their unequal political power, the supreme object of all schemes for the extension of slavery. Louisiana, Arkansas, Florida, and Texas, all lying south of the compromise line, have been admitted as slave States. These five slave States have ten senators and sixteen representatives. So long as this division was an advantage to the southern States it was maintained by them; but when a free State was likely to be formed north of this line in the now disputed territory, slavery claimed that also. In 1854, in violation of all the legal and honorable obligations which adhered to the compromise of 1820, it was repealed by an administration almost as intensely pro-slavery as the present. The south thus repudiated all its final settlements, even the finality act of 1850, and reopened slavery agitation. The whole subject was referred to the people of the Territory, and they were to be perfectly free to do all things in their own way. The question was to be taken out of Congress. Such was the pledge, and the sequel evinces this also will be observed no longer than while it can be made to operate advantageously to the interests of slavery extension.

The doctrine of the sovereignty of the people was enunciated, as the annual message of the President relates, by "the resolution adopted on a celebrated occasion," that is to say, by the Cincinnati convention, being part of the platform from which the President agreed not to take or add a single plank. Here it was declared "the right of the people of all the Territories, including Kansas and Nebraska, acting through the legally and fairly expressed will of the majority of actual residents, and whenever the number of their inhabitants justifies it, to form a constitution with or without slavery, and be admitted into the Union upon terms of perfect equality with the other States."

This resolution, if not mandatory upon the people of Kansas, ought not to have been disregarded by the party, at least until after the meeting of their next national convention. It could not have been anticipated that the President, or any of the parties to such a resolution, would ever have found occasion to waver and evade the force of doctrines so fully expressed. The faith and honor of the party was pledged.

The inaugural address of President Buchanan held up the same key-note, and proclaimed "the imperative and indispensable duty of the government of the United States to secure to every resident inhabitant the free and independent expression of his opinion by his vote. This sacred right of each individual must be preserved."

It was this unequivocal avowal of the President which inspired hopes in places where "confidence is a plant of slow growth" that the Kansas troubles were about to be fairly and properly adjusted. The good faith and honor of the President of the United States was pledged.

In view of this principle, the instructions of the President, through Secretary Cass, to Governor Walker, were made out, dated March 30, 1857, where he says the delegates to frame the constitution have the right to be protected in "tranquil and undisturbed deliberation," and "when such constitution shall be submitted to the people of the Territory, they must be protected in the exercise of their right of voting for or against that instrument, and the fair expression of the popular will must not be interrupted by fraud or violence." Here the good faith and honor of the President and his cabinet were pledged.

Governor Walker proceeded to the Territory, and in his first letter to Mr. Cass declared:

"On one point the sentiment of the people is almost unanimous, that the constitution must be submitted for ratification or rejection to a vote of the people who shall be *bona fide* residents next fall."

Kansas, even thus early, was "almost" unanimously pledged, and the people have nowhere revoked the pledge.

In the inaugural address of Governor Walker, approved by the President and his cabinet, and at no time disavowed, he zealously labors to convince the people of Kansas that under *his* administration, however they might have suffered from invasion and fraud heretofore, they were to be protected by the strong arm of the United States government.

"I repeat," he says, "then, as my clear conviction, that unless the convention submit the constitution to the vote of all the actual resident settlers of Kansas, and the election be fairly and justly conducted, *the constitution will be and ought to be rejected by Congress.*"

The whole web of this stately address was enriched and made stiff by similar phrases, as follows:

"But Kansas never can be brought into the Union, with or without slavery, except by a previous solemn decision, fully, freely, and fairly made by a majority of her people, in voting for or against the adoption of her State constitution."

The good faith and honor of Governor Walker was pledged. To save his honor *he* loses his office.

These views were emphatically repeated at various places. A convention of the national democratic party of Kansas assembled at LeCompton, at which a resolution was proposed, the governor says, "which was regarded as substantially against the submission of the constitution to the vote of the people, was laid on the table, as a *test vote*, by a vote of forty-two to one."

After this action of the "national democratic party," composed, as it was, "of a large majority of the leaders of the pro-slavery party" of Kansas, acting as elsewhere in concert with the democratic party, it would be wrong not to infer that nothing less than the submission of the entire constitution would be satisfactory even to them. Other and direct resolutions were passed by democratic conventions, which pledged the good faith and honor of the party in Kansas to provide for a submission to the people and abide in ultimate vote.

Besides this, members of the convention gave written pledges. John Calhoun, afterwards the president of the convention, with seven other candidates, published a pledge "To the Democratic Voters of Douglas

County," and denounced it as a *slander*, when it was said he was "opposed to submitting the constitution to the people." The president of the Lecompton convention was "fully, freely, and without reservation" pledged to a submission.

Not to omit the last link in the chain of the plighted faith of the democratic party, an extract from the *Union*, the organ as much of the administration on the 7th of July last as now, when its "instructions return to plague the inventors," will be given:

"Under these circumstances, there can be no such thing as ascertaining clearly and without doubt the will of the people in any way except by their own direct expression of it at the polls. A constitution not subjected to that test, no matter what it contains, will never be acknowledged by its opponents to be anything but a fraud." * * * "We do most devoutly believe that, unless the constitution of Kansas be submitted to a direct vote of the people, the unhappy controversy which has heretofore raged in that Territory will be prolonged for an indefinite time to come."

After such a long array of pledges, it is a source of mortification to find that any political necessity should arise so potent as to break them all in succession, as it approaches to a Punic reflection upon our national character. If Governor Walker be an exception, it is enough to say that, notwithstanding the glittering compliments with which he was decorated at the outset for his "distinguished public services" and the "high positions" he had "so ably filled," he has been forced to send in his resignation, because he would not violate pledges which *he* says he could not do without "personal dishonor." It behooves some in authority to see to it that *they* do not retire with greater loss than befell Governor Walker.

The people of Kansas accepted and relied upon these promises. Through their impassioned utterance and wide promulgation by the governor of the Territory, they obtained evidence for good faith and restored peace to an embittered and enraged people. They expected, and had a right to expect, the entire fulfilment of pledges made in behalf of the United States government—made by its authorized agents, by Congress, and the Executive. But when it was ascertained this course would decide the question in favor of freedom, and against slavery, then it is no longer expedient, and the majority are not allowed to rule. The whole policy is suddenly changed, and all these pledges are deliberately and wantonly violated.

Notwithstanding the loud claim of entire impartiality put forth in certain quarters, that it makes no difference whether Kansas is a *free State* or *slave State* on the question of admission into the Union, this shows that pro-slavery men every where will, at all costs, deny the legality and expediency of any course which might present Kansas as a *free State*.

There never was but one reason why the Lecompton constitution was not submitted to the people for their approval or disapproval, and that was openly avowed by its own architects and admitted by the President, namely, the certainty of its entire and absolute rejection! It is a queer commentary of the Kansas message on the Kansas-Nebraska act and on these pledges, that we should force the Lecompton constitution upon the

people of Kansas, because, "had the whole Lecompton constitution been submitted to the people, the adherents of this (Topeka) organization would doubtless have voted against it." The people of Kansas will not recognise or vote for it, therefore Congress must. Censured for *not* voting, and then *not allowed* to vote when they wanted to vote, and "would doubtless have voted against it!" Censured by the President, outlawed by a majority of this committee for what is not true, and if it were true is no crime, the people of Kansas are now to be *punished* by Congress without investigation and without trial.

The President has stated that slavery "exists in Kansas by virtue of the Constitution of the United States." To be sure we have been a long time in finding out the fact that the Constitution, *in propria rigore*, carries slavery into all the Territories, and Madison, Jefferson, Hamilton, and Jay fortunately died in ignorance, as they looked forward to the time of universal emancipation, when it should not be known by anything in the Constitution that slavery ever existed under it. "The highest tribunal known to our laws," the President avers, have so decided; but this is manifestly a "delusion" of the President, as that tribunal has only intimated what would be its opinion if the case was before it for decision—intimated that it will decide political questions, while its power is limited to judicial questions. It is true that the majority of this political and *once* the "highest judicial tribunal known to our laws"—claiming power tantamount to that of *changing* the Constitution itself—has intimated a purpose to decide the supposed question as stated by the President, who thereupon, turning his back upon his own unilluminated record, makes haste to ejaculate, "How it could ever have been seriously doubted is a mystery."

Besides this, a "constitution with slavery has been framed in Kansas," in strict accordance with the organic act, as the President says, forgetting that act gave the *territorial legislature* no power about forming a constitution, whatever may be claimed in behalf of the people; and he is "decidedly in favor of its admission," because, among other reasons, its rejection will be so "keenly felt by the people of fourteen of the States of this Union where slavery is recognised under the Constitution of the United States." (It would appear that the President does not think "slavery is recognised" really in any of the States, unless they supported him in the last Presidential contest, and therefore, very properly, Maryland is *counted out*!) So far as "it may affect the few thousand inhabitants of Kansas," or the people of the other seventeen States of this Union, it is a question, it appears, of the merest "insignificance." Not to do the President any injustice, we give the whole paragraph:

"In considering this question, it should never be forgotten that, in proportion to its insignificance, let the decision be what it may, so far as it may effect the few thousand inhabitants of Kansas, who have from the beginning resisted the constitution and the laws, for this very reason the rejection of the constitution will be so much the more keenly felt by the people of fourteen of the States of this Union, where slavery is recognised under the Constitution of the United States."

But, to soften this rigorous condition of Kansas affairs, as presented to northern men, the President says: "If the delegates who framed

the Kansas constitution have in any manner violated the will of their constituents, *the people always possess the power to change their constitution or their laws according to their own pleasure.*"

Is this true? What may be the decision of the "highest tribunal known to our laws." If *that* should decide the Kansas constitution as unalterably fixed until 1864, might not the President again cry out, "How it could ever have been seriously doubted is a mystery?"

In the very message of the President in which he insists that in no other manner can slavery be prohibited so speedily as by admitting Kansas at once into the Union, he nullifies the whole argument by denouncing the Topeka government—originated, adopted, and twice ratified by the people Kansas Territory—as a "treasonable pertinacity."

"It is a usurpation," he says, "of the same character as it would be for a portion of the people of any State of the Union to undertake to establish a separate government within its limits, for the purpose of redressing any grievance, real or imaginary, of which they might complain, *against the legitimate State government.* Such a principle, if carried into execution, would destroy all lawful authority, and produce universal anarchy."

In such a contingency, what the President would feel it his duty to do is clearly indicated in his letters to the New Haven clergymen, dated August 15, 1857; and it is to be remarked that his subsequent messages are constructed upon this as a model, only that revision has suggested, as in better taste, less claim to divine approbation, and the entire omission of the fratricidal stab at the Hartford convention. His language, as it stands in the original document, is:

"This was a usurpation of the same character as it would be for a portion of the people of *Connecticut* to undertake to establish a separate government within its *chartered* limits for the purpose of redressing any grievance, real or imaginary, of which they might *have complained* against the legitimate State government. Such a principle, if carried into execution, would destroy all lawful authority, and produce universal anarchy."

Now, for what the President would do in a case of "actual collision with the constitution and the laws" of Kansas:

"Following the wise example of Mr. Madison towards the Hartford convention, illegal and dangerous combinations, such as that of the Topeka convention, will not be disturbed, unless they shall attempt to perform some act which will bring them into actual collision with the Constitution and the laws. In that event they shall be resisted and put down by the whole power of the government. In performing this duty, I shall have the approbation of my own conscience, and, as I humbly trust, of my God."

From this it would seem clear that, if the people were to attempt to change their constitution in any manner not recognized in the Constitution as lawful, the President would put it down as "domestic violence." He would christen it rebellion, and then crush it "by the whole power of the government." His later published opinions, it is true, set forth principles altogether of a different character; but, when the crisis arrives, to which would the President adhere?

If the majority of the people "can make and unmake constitutions at pleasure," as the President say, then the minority have no protection in constitutions, and a majority of the people of the United States, or of Virginia, may assert their power at once, if they choose to change their domestic institutions and alter the basis of representation, as the President declares "it would be absurd to say they can impose fetters on their own power which they cannot afterwards remove.

If the President means that the people have a revolutionary right to change their constitutions at pleasure, or upon sufficient cause, it was hardly necessary to urge a point nowhere disputed. If he means that the people of Kansas not only have this revolutionary right, but that when the constitution, in violation of their will, shall be imposed upon them, it will be time to strike the blow, the President and the people of Kansas for once appear to agree. That any portion of our people, however, so long and so happily schooled in the pure doctrines of republicanism, should be driven to this sad extremity, shows that the grievances complained of are *real*, though they have been constantly greeted with mockery. We may well ask whether it becomes the government of the United States to force any part of its citizens to resort to revolution and civil war to redress their grievances? The mere necessities of an executive triumph or of a sectional victory, the stress of technicalities or of passionate partisans, will poorly atone for so dire a calamity as civil war, which goes on to the page of history, if successful, as revolution, but, if not successful, as treason. To give the people of Kansas a chance to settle their differences, not by the ballot-box, but by waging battle, invites not only a test of the strength of parties there, but a test of the strength of their external alliances. This would be a public shame, a blot upon the theory of all self-government, which all in executive or legislative authority should struggle to avert.

But the whole doctrine of the President as to the admission of Kansas being the speediest mode of abolishing slavery is, to say the very least, a "delusion," unwarranted by any thing in our history, and unworthy of its source. It is deceptive, and cruelly calculated to mislead the people of Kansas. No State, after its admission, can receive any additional power from Congress to alter its constitution beyond what it may already have as an independent State. Congress cannot interfere with regard to the constitution of a State, whether within one year of the date of its admission or sixty years. Once admitted, recognize what we please, condition what we please, the State will disregard the whole or not, as it suits its convenience. The Lecompton constitution points out the mode by which it may be changed, as follows:

"Sec. 14. *After the year one thousand eight hundred and sixty-four, whenever the legislature shall think it necessary to amend, alter, or change this constitution, they shall recommend to the electors at the next general election, two-thirds of the members of each house concurring, to vote for or against calling a convention; and if it shall appear that a majority of all the citizens of the State have voted for a convention, the legislature shall, at its next regular session, call a convention, to consist of as many members as there may be in the house of repre-*

sentatives at the time, to be chosen in the same manner, at the same places, and by the same electors that choose the representatives ; said delegates, so elected, shall meet within three months after said election, for the purpose of revising, amending, or changing the constitution, *but no alteration shall be made to affect the rights of property in the ownership of slaves.*"

This is the only peaceable and lawful way provided for. Any thing in opposition to this would be insurrection and rebellion, to be "put down," as the president has already indicated, "by the whole power of the government." If Congress has no power to change this provision, the President has as little ; though it must be confessed that he might take sides with the revolutionists, and lead them with the army of the United States on to victory, and thus put down the Lecompton constitution ; but, judging from the past, invariably having sided with the minority when they were wrong, he would not forsake them when they chanced to be right.

But suppose the question before the Supreme Court. Did ever Marshall or Story announce a decision based on neighborhood report, or upon "the known will of the people?" Not at all ! They pronounced their decisions as based upon constitutions and the laws of the land. The position of the Supreme Court is not left in doubt by the recent attempt on their part, by judicial legislation, to extend slavery beyond the limits of the States where it existed into all the free Territories of the United States, and which the President has been so swift to recognise as the law of the land. Yet these judges had no more authority or power, by anything they could say or do, to extend slavery beyond the limits of the States where it was upheld by local law than so many other persons who were never clad in the silken robes of judges ! The pro-slavery predilections of the present Supreme Court would secure a decision that, if the Constitution provided only one way in which it could be amended, it must be amended in that way, and no other ; and this would be their position, because it would be the utterance of a legal truth, and because it would not contravene their own recent judicial enactments.

Again, suppose reliance is had upon the State officers and legislature provided for by the Lecompton constitution, and voted for on the 4th of January last. The result has been reported by Governor Denver to be the election of the free State men by considerable majorities. But John Calhoun is the irresponsible agent and ultimate arbiter to decide who is elected and who is not. It is important to know what *he* will do. His *ex parte* statements to Senator Green set down the free State vote at 7,059, of which 631, he said, were *illegally* cast, leaving but 6,428 ; and against this appeared 6,581 *legal* democratic votes, or 153 pro-slavery majority. The frauds by which this result is made out are already published.

The whole supplemental connexion of Calhoun with the constitution, and with the election of State officers, is illegal and void. When the convention adjourned *sine die* he could have no power conferred upon him above that of any other member. The whole body was defunct. If there was any legislation required, they could not usurp and take

it from the territorial legislature. The result is, while it was intended to perpetrate a legislative trick, it is coupled with a gross illegality.

It would be a vain expectation to look for a correction of fraudulent election returns in Kansas, when such a correction would benefit the free State men, from a pro-slavery man, or from a federal office-holder, with the fate of such heretofore adventurers staring him in the face. This is but another snare for freedom in the hands of the spoiler. State officers, inducted into power by Mr. Calhoun, would hardly seek for emancipation, but for the establishment of slavery on a grander scale.

The surveyor general and president of the convention can hatch out whatever brood he pleases. He has the returns in his pocket. Even the President of the United States has received "no official information" of the result. Some of these returns are sworn by the judges of the elections to be forged. Some were not received within the time prescribed in the constitution. This leaves it in the power of one man, by the process of inclusion or exclusion, to give whatever complexion he chooses to the legislature. Mr. Calhoun, not being above suspicion, preserves a notable silence—notable, whether constrained or voluntary. Honor and truth covet no mystery. The conclusion is irresistible that, however the close chippings and parings may finally tip the balance, no majority, and far less "*two-thirds*" of the members of *each house*" will concur in calling a convention, and if they should, it would be void until 1864 under the Lecompton constitution. In addition to this, a majority of the people, and then a majority of the succeeding legislature, must also concur.

To perpetuate this power the elections are only to be held once in two years, and the senators are to hold their office for four years. So that, whatever may be the complexion of the house, a pro-slavery senate is only to be secured to hold it checkmated for four years, or until 1862, in any event. For this purpose a governor's veto will be equally serviceable at any time.

To understand the atrocious conspiracy by which the ill-gotten ascendancy of the minority of the people of Kansas is to be maintained, it must be remembered that the census and registry of votes taken in May, 1857, was very incomplete, so far as the free State voters were concerned; but still it furnished the basis of the apportionment of the constitutional convention. The strongholds of slavery were thus strongly represented, while the strongholds of freedom were not only misrepresented but curtailed in the apportionment far below what their numerical strength would have entitled their localities. Now, the apportionment in the constitution not only perpetuates this wrong, but aggravates it, by giving to the counties of Johnson, Douglas, and McGee, such representation as they had at the start, and, in addition, a full acknowledgment for the lusty increase of voters which their fraudulent industry had culled from the Cincinnati Directory and other sources. As an instance, the county of Johnson, with 890 population, had in the first apportionment three delegates. In the last apportionment it has four members in the lower house and two senators. The county of Doniphan, with 4,120 population, in the first apportionment had seven delegates. It now has but four repre-

sentatives and one senator independently, and one jointly with another county. This will show the utter impossibility of effecting any change in the Lecompton constitution, though two-thirds of the people should steadily demand and vote for it. There must be nearly an entire unanimity of sentiment in Kansas to bring about a change in any lawful manner. The fortresses of the pro-slavery party have been constructed with the desperation and audacity of criminals besieged, and they can only be demolished, when recognized by Congress, by the roused forces of indignant freemen, resolved on revolution.

We have seen the promises of the President touching the right of submission of the constitution to the people of Kansas, and we now have his opinions as to their right of changing the constitution. The opinions are more worthless than the promises; for if, in this instance, the President were to maintain his integrity, he cannot decide the question, and therefore the Lecompton constitution will be sustained by Lecompton judges.

The President calls the free-State Topeka constitution a "revolutionary constitution;" and so much has it been denounced and so little understood, that many people suppose there must be something very wrong about it. It is true it did not originate in violence and fraud, nor under any enabling act of Congress. If any such act was necessary, the Lecompton constitution is all wrong. It was the free act and deed of the people. This is the doctrine asserted by the President himself when he insists upon the right of the people, under their organic law, to form a constitution. He says:

"That this law recognized the right of the people of the Territory, without any enabling act from Congress, to form a State constitution is too clear for argument."

If no law from Congress was necessary, none from the territorial legislature, the mere creature of Congress, could be absolutely necessary.

In 1855, long before the Lecompton fraud was planned or executed, delegates were elected, in response to the call of a mass convention, composed of men of all parties, in every election district. All voted who chose to vote, and those who did not vote, on the President's theory, assented, and were thereby bound. These delegates met at the time and place specified. They formed no constitution, but arranged for a fair election of delegates to a constitutional convention. A proclamation was issued to the legal voters of Kansas. Under this, delegates were elected from the various election precincts and assembled at Topeka on the fourth Tuesday of October, 1855. Qualifications of voters, judges of elections, and apportionment were all attended to in due form. At this election, all voting who chose, 2,710 votes were polled.

This convention formed a constitution, republican in all its provisions, and similar to all our State constitutions, and submitted it for adoption or rejection to the people on the 15th of December, 1855. It was adopted by a vote of the people of about 2,300, only 46 votes being given against it. Could any action be more fair than that? Even at this early day it is more than probable a larger number of legal votes were given for this constitution than were given for the

Lecompton constitution. At this session of Congress a memorial, with over 7,000 signatures, praying for admission under the Topeka constitution, has been received. There has been no memorial in behalf of the Lecompton "revolutionary organization," and the memorial is a protest seven thousand strong against it.

From the beginning the whole history of Kansas affairs shows that more or less of illegal voting has been practiced at every election, and always by the pro-slavery party, protected by federal bayonets or shielded by the federal government. By the report of the Kansas committee of the House, July 2, 1856, and no one material fact of that report, however rudely assailed, has been or can be successfully controverted, the following facts and conclusions were established by unimpeachable testimony:

"First. That each election in the Territory held under the organic or alleged territorial law has been carried by organized invasion from the State of Missouri, by which the people of the Territory have been prevented from exercising the rights secured to them by the organic law.

"Second. That the alleged territorial legislature was an illegally constituted body, and had no power to pass valid laws, and their enactments are therefore null and void."

At the election held November 29, 1854, it was proven before the committee that only 1,114 legal votes were cast, and 1,729 *illegal*.

At the election held March 30, 1855, of the 2,905 voters named, only 831 appeared in the census rolls. The number of legal votes given was found to be 1,410, and 4,908 *illegal*. At the last Congress this House, by a decided majority, declared that the assembly thus elected was *illegal*, and its proceedings void.

At the election of October 1, 1855, so far as was examined, 857 *illegal* votes were cast, but the examination was incomplete.

At the election held in October, 1857, for the territorial legislature, among the most noted frauds were the 1,628 votes in Oxford, Johnson county, where there are but 33 voters, as ascertained by the late census; 1,266 votes in three precincts of McGee county, an Indian reservation, with not above 25 to 30 inhabitants.

It is to be noted that while the instructions of the President were sanctified by all the holier graces, such as—

"Freedom and safety for the legal voter, and *exclusion and punishment for the illegal one*; THESE SHOULD BE GREAT PRINCIPLES OF YOUR ADMINISTRATION." Again: "And the fair expression of the popular will must not be interrupted by fraud or violence."

Yet, when Governor Walker and Secretary Stanton presumed to reject these forged returns, for the making of which there was no law to punish—rejected, not as forgeries, but lack of forms which even true returns must have—they were treated with ominous silence. No allusion is made by the administration to the facts; and after being frozen with neglect, the governor and secretary are superseded. Daring to be honest, they share the fate of Governor Reeder for a similar offence. A clue to the chagrin of the Executive may be found in the instructions to Governor Denver, which enjoin that "great care should be taken *not to exercise any legal authority*. On this

point I again refer you to my instructions to Governor Walker and Secretary Stanton, which you will regard as direct to yourself." Upon referring to these we find as follows: "Thus the governor seems to have been *excluded* from any participation in the conduct of elections." Again: "But this decision, [of the judges,] *whatever it may be, is final*, so far as the Executive is concerned." This is something of a descent from the lofty tone of "exclusion and punishment for the illegal" voter at the start. *Then* it was "these should be great principles of your administration!" Now, if the fraud gets by, or is winked at by the judges, it is *final*, and care must be taken not to exclude the fraud, but to exclude the governor from the exercise of illegal authority! The first instructions were for show and the last for use. Whenever *illegal voters* were excluded then the President's ox is gored.

At the elections of December 21 and January 4 last, it is known that further frauds were perpetrated with wonted *regularity* and *in due form of law*. A brief extract from the report of the board of commissioners, appointed by the legislature, to his excellency J. W. Denver, governor of Kansas Territory, will fully disclose its character. They say:

"From the evidence taken before them the board state that the returns from the Delaware Agency precinct were honestly made out by the officers of the election; and subsequently three hundred and thirty-six names were forged upon them, by or with the knowledge of John D. Henderson; and that John Calhoun was *particeps criminis* after the fact.

"The board report that of the votes returned of the election of the 21st December, 1857, on the slavery clause of the constitution framed at Lecompton, held at the precincts of Kickapoo, Delaware, Oxford, and Shawnee, about the following numbers were illegal and fraudulent:

At Kickapoo.....	700
Delaware City.....	145
Oxford.....	1,200
Shawnee	675

Total..... 2,720

"And of the votes returned of the election of the 4th of January, 1858, for officers under the constitution framed at Lecompton, held at the precincts of Kickapoo, Delaware City, Delaware Agency, Oxford, and Shawnee, about the following numbers were illegal and fraudulent:

At Kickapoo	600
Delaware City.....	5
Delaware Agency.....	336
Oxford	696
Shawnee	821

Total..... 2,458'

It will be seen that of the 6,143 votes counted in the "official returns" 2,720 were fraudulent, which, being deducted, leave but 3,423 votes for the Lecompton constitution, and many of these were doubtless of the same character as those of Kickapoo and Oxford. Yet, according to the report of the majority of this committee, "the legality and regularity of the whole are marked throughout. Every step in its progress was taken in strict conformity to law. But little appears on the face of the record even for comment!"

Thus it is seen that the whole series of elections in Kansas have been vitiated by fraud. If the people went to the polls they were overwhelmed by a deluge of foreign intruders. When these were not present in sufficient force, then the territorial officers defeated the will of the people by false returns—despoiling the dead and the living of their good names in the service of frauds so magnificent in proportions that they obtained some credit from that charity which was unwilling to ascribe so great depravity to any portion of humanity.

We think it is the duty of Congress to pass over all these Kansas elections and let the people there start anew. Otherwise, Congress will prove but the shield of fraud. If fraud is to be protected by Congress as well as by the Executive and the "highest judicial tribunal known to our laws," whenever it can wage a successful contest at the ballot-box, or with the returns of elections, then a despotism is already installed in our land, and vice is secure in a hereditary reign over virtue. Fraud and violence will become the invited masters over law and order.

No truthful observer, no fair-minded man, will assert the Lecompton constitution to be the *act and deed* of the people of Kansas, or that it is made in accordance with the will of the majority of the people of the Territory. No vote of the pro-slavery party, however swollen by frauds, approaches in numbers that of the free-State party, whenever they have pretended to go to the polls. The public voice of these people, wherever uttered, whether by conventions of the masses of citizens or by the press, gives forth no uncertain sound. The tomb stones of all the decapitated governor of Kansas will record the fact that a large majority of the people of Kansas were free State men. Southern men affect to only expect a temporary enforcement of slavery. The existing territorial legislature is overwhelmingly a free State legislature, and their legislative proceedings indicate the profound detestation in which they hold the Lecompton constitution. They may not show discretion or moderation, but "something must be pardoned to the spirit of liberty."

If the constitution confers upon Congress certain powers, by no act of Congress or passing remark of the Supreme Court can they be expunged from the constitution. The non-use of such powers or their denial binds nobody, and they may be reasserted at the pleasure of Congress. In spite of all previous congressional abnegation, in spite of all squatter sovereignty, it will be reasserted in any bill which may be proposed for the admission of Kansas. No one proposes to admit *the whole* of what John Calhoun has certified to be the constitution of Kansas, but it is proposed to nullify and slide over it by saying the exceptional part forms no part of the constitution. As

though the convention were merely joking! The ordinance, which comes as a legal and binding part of the Lecompton constitution, secured to Kansas a large amount of public lands. The convention so understood it. Hear them:

"The within is a true and perfect copy of the *ordinance* adopted by the constitutional convention, *and submitted as part of the constitution* by the convention which assembled at Lecompton on the 5th day of September, A. D. 1857.

"J. CALHOUN,

"President Constitutional Convention.

"LECOMPTON, K. T., January 14, 1858."

But Congress does not propose to agree to that at all, and will reject it, though submitted in due form, and as solemnly as that which we are to receive and adopt. The part we *accept* is objectionable to the people of Kansas, though agreeable to the administration here. The part we *reject* is agreeable to the people of Kansas, but finds no favor here.

Should it be conceded that the free State men, by going into the election of October, 1857, have waived all objections to the validity of any prior elections, it would be monstrous then to turn round and say that, although the legislature was a valid one, its acts are not. When the people keep away from the polls, they are stubborn, "*male fide* inhabitants," to be subjected to those who do go to the polls. When the indisputable majority do go to the polls, they have no power to escape from the yoke of the minority, or to "change its character;" and their going to the polls at all is a kind of impudence to be interpreted as "recognizing its valid existence." The President is hard to please. This is what he says in his Kansas message:

"It is proper that I should briefly refer to the election held under an act of the territorial legislature, on the first Monday of January last, on the Lecompton constitution. This election was held after the Territory had been prepared for admission into the Union as a sovereign State, and when no authority existed in the territorial legislature which could possibly destroy its existence or change its character. The election, which was peaceably conducted under my instructions, involved a strange inconsistency. A large majority of the persons who voted against the Lecompton constitution were at the very same time and place recognizing its valid existence in the most solemn and authentic manner by voting under its provisions. I have yet received no official information of the result of this election."

Many of the free State men refused to go into this election because they foresaw this jesuitical charge of "inconsistency," but enough did participate, under protest, to wholly control its results. They did not, however, undertake to destroy the work of the convention, as perhaps they might, but in a peaceable and orderly manner they undertook to untie the hands of the people, and let them, in their highest sovereign capacity, break the fetters about to be imposed upon them.

The approval or disapproval of the work of the convention, as con-

templated by itself, was yet unexecuted. The act of the legislature did not curtail but extended to the people this fundamental right. How can its fairness or its legality be impeached? When it suits the President's purpose, he asserts the same doctrine, thus:

"The will of the majority is supreme and irresistible, when expressed in an *orderly and lawful* manner. They can make and unmake constitutions at pleasure. It would be *absurd* to say that they can impose fetters upon their own power which they cannot afterwards remove. If they could do this, they might tie their own hands for a hundred as well as for ten years. These are fundamental principles of American freedom," &c.

By this it would seem that the President concedes the irresistible power of the majority to "make and unmake constitutions at pleasure," but then it is wholly inoperative so far as the Lecompton constitution is concerned. What is it that makes that so sacred? If a majority can change a constitution at will, cannot a majority change a mere law? The convention, empowered only to make a constitution, may legislate as much as it pleases, repeal "the bill incorporating banks," and prevent the territorial legislature from all further exercise of legislative authority, while the legislature itself cannot move to protect itself or the people! This is too absurd for serious argument.

If a convention cannot put fetters on to the people to bind them, far less can a legislature bind its successors in office not to alter or repeal any of its acts. The properly elected territorial legislature of Kansas, with the sanction of the acting governor, and in obedience to his recommendation, passed an act on the 17th of December, 1857, conceded to be proper in itself, which the President admits would have been proper and binding if it had been passed by its predecessors, submitting the *whole* constitution to a vote of the people, submitting it also *with* slavery and also *without*. The result of that election was duly certified by the acting governor. If the President is without "official information," it is because he knows how to be without what he does not want. There is no legal flaw in the whole proceeding. It was as binding in all its legal consequences as any act of a territorial legislature could be. It had all the moral weight of the people. If any part of the people refused go to the polls, never could it be so justly said that it was their fault. In point of fact, a larger number of legal voters did go to the polls than ever upon any prior election. It was a fair election, conducted in an "orderly and lawful manner." No accusation of fraud has been made against it. And at this election the Lecompton constitution was rejected by a vote of more than ten thousand majority. This was its legal and final overthrow, and placed beyond resurrection even by Congress.

The power to admit new States into the Union gives to Congress no power to coerce the people of a Territory into the Union, or into the acceptance of a State constitution. If we may force a pro-slavery State in, we may force an "abolition" State out. The agents who come here are no more authorized to act in behalf of Kansas than of Nicaragua, and Congress may as rightfully admit one as the other.

General William Walker and John Calhoun stand on a level as representatives of popular sovereignty.

On the 4th of January, 1858, the Lecompton constitution received its legal condemnation and execution. Not being a legal instrument in its formation in any sense, the only thing legal about it is its rejection. There is no galvanic battery of the Executive now that can give its bantling, so long dead that it has become a stench in the nostrils of the whole people, any further vitality. Unless Congress shall assert a power equal to making a constitution *de novo* for a State, this Lecompton constitution will be rejected.

The President thought the charge preferred against him by the New Haven clergymen, that he was employing the *army* "to force the people of Kansas to obey laws not their own, nor of the United States," if well founded, "ought to consign his name to infamy." How can we escape the same doom if we employ the legislative power of the government for the same purpose?

To impose a constitution upon a State without unequivocal evidence that it has substantially the sanction of the majority of the people to be affected thereby is not only a violation of the political rights of freemen, but a gross and palpable violation of the Constitution of the United States, which guaranties to all the States a republican form of government, the very essence of which presupposes the "consent of the governed."

The statements made in this report are founded upon official documents and conceded facts; but if any should be disputed, we fearlessly challenge such an investigation as will put their accuracy to the severest test. There is no scrutiny that we do not court, as there is no truth that we do not seek. The whole purpose of the committee having been thwarted by the refusal of the majority to enter upon a full and fair investigation, we submit that the facts already proved are enough to establish the positions we maintain to the fullest extent:

1. That an investigation ought to have been had by a committee with the power and disposition to send for persons and papers.

2. That the President has been misinformed and badly advised "in relation to the condition of parties in Kansas." Though he says "*a great delusion seems to pervade the public mind,*" it is quite apparent that the public might, with greater justice, say, "*Thou thyself beholdest not the beam that is in thine own eye.*"

3. That in proportion as Congress has relaxed its power over Territories that of the Executive has increased; and that all difficulties cannot be removed until Congress shall resume its entire constitutional authority.

4. That the maligned Topeka constitution was the act of the people of Kansas, accords more with the will of her people than any other, and is more entitled to the respect of Congress.

5. That the plighted faith of the nation was pledged to the people of Kansas that any constitution which might be made should be submitted by its framers to them for their approval or disapproval; and this has not been done.

6. That there is not unimpeachable evidence to show that the con-

stitution presented by John Calhoun is an identical copy of the one agreed upon by the Lecompton convention before its adjournment.

7. That the Lecompton constitution was illegal in its inception, and therefore void ; and, if this were not so, through the action of the Territorial legislature, the people have been enabled fairly and legally to vote for or against it, and emphatically rejected it.

Not doubting the sincerity of the President, when he says "domestic peace will be the happy consequence" of the immediate admission of Kansas into the Union under the Lecompton constitution, we yet are constrained to say that, in our deliberate judgment, the President over-estimates the docility of the nation, and particularly that of the people of Kansas. "Domestic peace" cannot be obtained by trampling down the rights of any portion of the people. The measure is not expedient, even if it were just ; but it is clearly wrong.

The idea that Kansas must be admitted as a slave State, in order to satisfy the States "where slavery is recognized" that it is *not* the fixed purpose to admit no more slave States into the Union, is even less tolerable. It will be time enough to raise that question when a slave State offers itself for admission. To force a free State into the Union as a *slave State* will test the question more keenly than may be desirable, and the project should be dismissed as a dangerous experiment.

JUSTIN S. MORRILL,
EDWARD WADE,
HENRY BENNETT,
DAVID S. WALBRIDGE,
JAMES BUFFINTON.

MINORITY REPORT OF THE SELECT COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

Mr. THOMAS L. HARRIS, from the Select Committee to whom was referred the President's message concerning the constitution framed at Lecompton, submitted the following

VIEWS OF THE MINORITY.

On the 2d day of February last the President of the United States transmitted to both Houses of Congress an elaborate message, urging Congress to admit Kansas into the Union as a sovereign State in virtue of a so-called constitution said to have been adopted by a convention of delegates assembled at Lecompton, a copy of which constitution he also transmitted to the Senate, and which has been, by its order, printed and is now before the country.

Upon the reading of the message of the President in the House of Representatives, it was by that body—

“Resolved, That the message of the President of the United States concerning the constitution framed at Lecompton, in the Territory of Kansas, by a convention of delegates thereof, and the papers accompanying the same, be referred to a select committee of fifteen members, to be appointed by the Speaker; that said committee be instructed to inquire into all the facts connected with the formation of said constitution, and the laws under which the same was originated, and into all such facts and proceedings as have transpired since the formation of said constitution, having relation to the question or propriety of the admission of said Territory into the Union under said constitution; and whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas; and that said committee have power to send for persons and papers.”

The committee appointed by the Speaker under this resolution, after four brief sessions, being composed, with a majority of its members, of those who had resisted its adoption—

“Resolved, That the law of the Territory of Kansas providing for taking the sense of the people of that Territory upon the propriety of their applying for admission as a State into the Union, and the vote of the people under said law; also, the law of said Territory providing for a call of a convention in pursuance of the popular will thus expressed, together with the registration of voters and the apportionment of delegates to said convention under said act, and the election of delegates as officially certified to; the said constitution, as framed by said convention, and the vote on its submission under its own schedule and provisions as officially adjudged and announced, embrace all the laws and facts essential to the investigation of the questions submitted to this committee under the resolution of their appointment.

“Resolved, That while we do not consider the votes of the 4th of January last, on the submission of said constitution by the late territorial legislature, as having any material bearing upon the points of

this inquiry, yet we admit, receive, and allow to be filed with the other matters collected by this committee, the vote at that election as proclaimed and published by the officers of the legislature."

The majority of the committee adopted also a report based, not upon facts or evidence, but setting up speculations and surmises instead of reliable information; and sharp criticisms upon opinions heretofore advanced by distinguished citizens, rather than reasons why Kansas ought to be admitted into the Union under the Lecompton constitution.

The undersigned were prevented by the action of the majority of the committee from obtaining that reliable information which they desired and which they think they had a right to expect. Every avenue of inquiry was firmly blocked up, and we are compelled to follow the example which the majority have set in submitting our views upon the President's message and the meagre data already before the country, rather than upon authenticated facts collected by the committee.

The President in this message has departed from the usual precedents heretofore set by his distinguished predecessors, and instead of leaving Congress to decide the question with calmness and dispassion, he has argued in favor of the admission of the proposed State at great length and with unusual vehemence. It is believed that no similar interposition and feeling have ever been exhibited in favor of the admission of any State. Eighteen new ones have entered the Union, commencing in 1791, and coming down through nearly every successive administration, but in no case has the President ever taken sides in this earnest manner for or against the proposed action of Congress. If it shall be said that the case of Kansas is an unusual one, and required from the Executive an expression of his views and opinions, it will also be conceded that the California case was quite as unusual. But on that occasion the message of the President was as follows:

"To the House of Representatives of the United States:

"I transmit herewith to the House of Representatives, for the information of that body, an authentic copy of the constitution of the State of California, received by me from Gen. Riley.

"Z. TAYLOR.

"WASHINGTON, February 13, 1850,"

The undersigned cannot but contrast this brief message of General Taylor, following, as it did, the early precedents in like cases, with the lengthy argument of President Buchanan in favor of the Lecompton constitution, and they infer from it that the President feels an extraordinary solicitude that Kansas shall at once be admitted into the Union under the constitution transmitted. Not only does the President take this deep interest in the admission of Kansas, but the members of his cabinet are equally strenuous in urging their views upon the public in the shape of epistolary arguments in favor of the President's project. The multitude of those who hold official station at the hands of the President, or at the hands of his constitutional advisers, are induced to enlist their efforts to the same end, or if they differ in opinion and have independence enough to avow it, they are

promptly displaced, and others more accordant in judgment or more servile in character are appointed their successors. These very unusual proceedings and efforts on the part of the Executive, and the perturbed condition of the public mind, have induced the undersigned to give to the subject, under the instructions of the resolution of the House, their most careful attention.

In the message of the President, it is stated that "a great delusion seems to pervade the public mind in relation to the condition of parties in Kansas," and the President affirms that a portion of the people of Kansas are in rebellion "against the government under which they live." If it really be true that a great delusion pervades the public mind on this Kansas difficulty, it is greatly to be regretted. The American people pride themselves upon their intelligence, and their attention has been, for four years, most intently directed to Kansas affairs. Thousands of newspapers have been collecting every item of information relating to them, and spreading it before the public. Numerous and able reports have been made by committees of both Houses of Congress, composed of their ablest members, and of all political parties, which reports have been printed and scattered broadcast everywhere for public information. Volumes of sworn testimony and documentary evidence have been published and sent to every neighborhood and hamlet. Numerous messages from different chief magistrates have been sent to Congress and printed by millions of copies; and the late annual message of Mr. Buchanan, in which he elaborately discusses Kansas affairs, had been for two months in every man's hand and in every man's mind, and yet he informs us, in his message of the 2d of February, that this "great delusion" still "pervades the public mind" in relation to affairs in Kansas.

The undersigned think it is unfortunate that the President has failed to communicate to Congress the evidence upon which he founds his opinion of this pending delusion, and as for want of such evidence, we have failed to discern the existence of such "delusion;" it has consequently been impossible to ascertain its cause, its extent, or its character, or to propose an adequate remedy. That an anxious state of the public mind exists in Kansas concerning the action of Congress upon this constitution we can well believe. But we have not been able to learn that there is an existing rebellion in that Territory of such character as the President intimates. A rebellion is an open resistance to lawful authority by arms or otherwise, and the rebellion of a people must be open resistance to government by large, if not controlling masses.

The undersigned, after the most careful inquiry, (the majority of the committee refusing to hear any testimony on the subject,) have been able to gather no information that the people of Kansas are (or have been since the late October election, at least,) in resistance or even opposition to any law of Congress, or to the government of the United States; and there is ample evidence that the people of Kansas are in entire harmony with the territorial government, both legislative and executive, and are warmly and enthusiastically supporting both. If there has been any hostility to the territorial government, it has been

on the part of the Lecompton convention, and on the part of those who approve its action.

It is not untrue that, when an attempt was lately being made to subvert their territorial government by fraud, deceit, and crime, and to substitute in its place one disapproved by at least four-fifths of the people of Kansas, that people became excited and indignant. They denied the binding force of the new government; they protested against it at the polls by at least nine thousand majority of the legal voters, they protested against it in solemn and earnest legislative resolves.

The people in primary assemblies everywhere condemned it, while there has been scarcely one voice raised in its defence. The people of Kansas, by such majorities, deny the validity of the proposed new government, and say it is not theirs. They have sent their petitions and protests here, praying Congress not to force Kansas into the Union against their wishes. They have moved in arrest of judgment, and have thus opened the whole record to our examination. But all this is not *rebellion* to this proposed government, for there can be no attempt to resist a government until an attempt at least is made to enforce it, and no attempt has yet been made to enforce the Lecompton constitution. There being, then, no effort made to resist the laws of Congress, the laws of the territorial government, or the proposed Lecompton constitution, it is not easy to discern the ground upon which the President rests the charge of an intense *disloyal* feeling and an exciting rebellion among the people of Kansas. The President is speaking of the existing condition of things at the time of his writing, and so are we.

With deference to the President it is submitted that directly the reverse is the fact, and had we been permitted to take testimony we could have established this position by indubitable evidence. Nor can it even be said that those who have thought favorably of the so-called Topeka constitution are in *rebellion* against their government. It is now more than two years since that instrument was formed. There was, originally, neither treason nor rebellion in its origin or provisions. It was sent to Congress, and on the 24th day of March, 1856, formally presented in the Senate by General Cass, and, upon his motion, referred to the Committee on Territories and printed. Its formation could hardly have been an act of disloyalty or rebellion. So far as its adoption by the people, on a submission to a vote under the auspices of the convention that framed it could give it vitality it was given, but no further. And in this respect it followed examples before set, which had received the approval of Congress. General Cass would hardly have presented an embodiment of treason and rebellion to the Senate of the United States. The improper action of Governor Robinson (as he is called by the President) and the Topeka legislature are, by the undersigned, emphatically condemned. Nor is it believed that their action has met the approval of any considerable number of the citizens of Kansas. But we are not advised that any attempt has been made to put the Topeka government into practical operation. Should such attempt be made it would be the duty of the territorial government to resist it and put it down, but until such an attempt is made there is no well-grounded cause of alarm,

either to the President or to the country. Yet the great argument in favor of the admission of Kansas as a State seems founded upon the supposed rebellious character of her people; a supposition that can rest only upon events long since transpired, and upon opinions long ago exploded. But were the President's opinion correct it would, instead of a reason for the admission of Kansas into the Union, be a conclusive one against it.

The President, in discussing the organic act, says:

"That this law recognized the right of the people of the Territory, without any enabling act from Congress, to form a State constitution, is too clear for argument. For Congress 'to leave the people of the Territory perfectly free,' in framing their constitution, 'to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States,' and then to say that they shall not be permitted to proceed and frame a constitution in their own way without an express authority from Congress appears to be almost a contradiction in terms."

This reasoning the undersigned believe to be more specious than sound. It was not necessary that the rights of the people of Kansas to frame a constitution should be recognized by an act of Congress. They could do this without such act, and apply for admission under it, and the admission or rejection of the proposed State would rest solely in the discretion of Congress. So if Congress should consent that they might frame a constitution, and send it up as an application for admission, this would not render it obligatory upon Congress to admit the proposed State, when such constitution might be presented here, *whatever that constitution*, and the circumstances attending its formation might be. The powers and rights conferred by the Kansas act were such as related to its *territorial condition*, and to that end Congress conferred all the powers it possessed upon the people of Kansas. The organic act contained also certain stipulations, that might be held as a pledge and contract with the people of Kansas, in regard to their rights when they come to be admitted into the Union. But it did not provide that Kansas should come into the Union *whenever* the people thereof might desire, nor *however* they might desire, much less that they might come when *one thousand* of her people *might desire to come*, and *ten thousand* desire *not to come*. If so, then Kansas is a State in the Union now, and our differences are without foundation. Ohio had an *enabling act*, and under it a State government was formed, and she came into the Union without further legislation.

If the original Kansas act was a like enabling act, why does not Kansas enter the family of States, as the equal and peer of the other States, and not remain higgling for Congress to unbar the door and bid her enter? A moment's inspection of the constitution sent to Congress will satisfy us that its framers did not consider that they had the right to form a State without the assent of Congress. This is evident from the fact that the constitution denies to itself any validity of force, until the State shall be admitted by Congress into the Union. It does not allow any of the officers, executive, legislative or judicial, to enter upon the discharge of any duties, "until after the admission of Kansas as one of the independent and sovereign

States." This provision fixes the time *when* the authorities of the proposed State shall assume their functions. The constitution also provides that, "all officers, civil and military, holding under the authority of the Territory of Kansas, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the State." These clauses clearly show that the convention claimed no right to exercise, and did not exercise, any power as a State, but having framed their constitution, they sent it to Congress as a petition, and they now ask us to recognize that constitution *as creating a State*, by the admission of such State into the Union. As a petition, we think it should be considered and acted upon, but that the framers of that constitution, or the people whom they claimed to represent, have a *right* to set up a State government in or out of the Union, we cannot admit. No such right has ever been conceded to them by Congress, nor claimed by the people of Kansas.

By looking at the language of the President, above quoted, it will be seen that, in order to give effect to his argument, he presents it in this form. He says:

"For Congress to leave the people of the Territory perfectly free, *in framing their constitution*, to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States, and then to say that they shall not be permitted to proceed and frame a constitution in their own way, without the express authority of Congress, appears to be almost a contradiction in terms."

But this, "almost contradiction in terms," is entirely removed when it is seen that the President, to make out this "contradiction in terms," has inserted in the sentence the words "*in framing their constitution*," which words are *not* in the act of Congress, nor is their import to be implied from the language there used. Not only are the words thus employed by the President *not found* in the organic law but it is not known that any one contends that the people of Kansas "shall not be permitted to proceed and frame a constitution in their own way without the express authority of Congress." And his excellency is quite as unfortunate in stating the argument of those who oppose the admission of Kansas under the Lecompton constitution as he is incorrect in stating the language and intent of the Kansas-Nebraska act. That act provides that "*the people of the Territory* shall be left perfectly free to form and regulate *their* domestic institutions in their own way." Whose institutions? The institutions of "*the people of the Territory*." Is a constitutional State government an institution for the "*people of a Territory*?" It is a very necessary one for the *people of a State*, but one with which the people of a Territory have nothing to do.

While, therefore, the people of Kansas, or any part of them, have a right, by way of petition, to ask Congress to recognize such State organization as they may propose, and while by the stipulations of the organic law they may "come into the Union with or without slavery, as their constitution may prescribe at the time of their admission," yet, as there could be no *irregularity* in their proceedings which would prevent Congress from hearing their statement of griev

ances and granting adequate redress, even by the admission of the State into the Union, so, on the other hand, there can be no technical *regularity* in forming a constitution that can make it incumbent upon Congress to admit such State as a matter of indisputable right. Whenever Congress is asked to act and provide for the incoming of a new State, whether by an original enabling act or a subsequent act of recognition, (as in this case,) it will look into all the circumstances and decide the question in view of the great results which are to follow its legislation, both to the people who inhabit the proposed State and to all the other States of the Union. And this duty of Congress is in no wise lessened by the acknowledged right of *the people of a Territory* to form and regulate *their* domestic institutions in their own way. This acknowledged right does not confer that other great right and privilege of becoming, at any time and under any circumstances, a State of the Union, and participating in shaping and controlling the interests of all the States in our confederacy.

The majority of the committee concur with the President in the opinion that "it is impossible that any people could have proceeded with more regularity in the formation of a constitution than the people of Kansas have done." Differing, as we do, entirely from this opinion, we propose to examine and test its correctness. "The people" of a Territory, or any political community, are the *whole body of its citizens*. No particular class, organization, or party, inside of the whole body, can justly be called "the people." If, from any cause, this "whole body" of citizens are prevented from participating in any popular function, and it is performed by a part only, it cannot be said that such function is the act of "the people." Before it can be said, therefore, that "*the people of Kansas*" have regularly proceeded and formed their constitution, it must appear that the whole body of the citizens of Kansas had free opportunity, without fear and without constraint, to participate in its formation. What now are the facts?

After the passage, in 1854, of the act of Congress creating the Territory, parties of widely different views concerning domestic slavery hastened to occupy its choicest and most eligible portions. They went resolutely determined to accomplish each an opposite purpose, and collision and violence almost immediately ensued. At the first election for members of the territorial legislature, on the 30th day of March, 1855, the pro-slavery party succeeded. The then governor (Reeder) gave certificates to the members elect, and by his action and that of the legislative bodies the territorial government went into full operation under pro-slavery auspices.

Whether that election was fair or unfair, just or fraudulent, it is not essential to our present inquiry to decide. Certain it is that it was conducted in a most turbulent, disorderly, and violent manner. The whole mass of voters were of recent coming to the Territory, and large numbers doubtless voted upon both sides who shortly afterwards left for other parts and never returned. Such was doubtless the case with many adventurers from the eastern States, and such is known to be the fact in regard to large bodies of men from Missouri. The defeated party believed they had been beaten by fraud and violence, and have always so asserted; but the action of Governor Reeder and the

legislative bodies closed the question to us on the present issue, and had the proceedings of that legislature been just or lawful he would have been spared any allusion to it whatever, and we believe the people of Kansas would have taken their own wrongs in hand and redressed them legally at the ballot-box.

But the legislature thus elected assembled and proceeded to enact a code of laws, many provisions of which have been denounced by men of all parties as disgraceful and infamous. They were the natural consequence of a triumph of one party over the other, between whom so much bitterness of feeling and so many acts of violence had occurred. Our purpose now is to refer only to the eleventh section of the law concerning elections. It is as follows:

"Sec. 11. Every free white male citizen of the United States, and every free male Indian who is made a citizen by treaty or otherwise, and over the age of twenty-one years, who shall be an *inhabitant* of this Territory, and of the county or district in which he offers to vote, and shall have paid a territorial tax, shall be a qualified elector for all elective officers; and all Indians who are inhabitants of this Territory, and who may have adopted the customs of the white man, and who are liable to pay taxes, shall be deemed citizens: *Provided*, That no soldier, seaman, or marine, in the regular army or navy of the United States, shall be entitled to vote, by reason of being on service therein: *And provided further*, That no person who shall have been convicted of any violation of any provision of an act of Congress entitled 'An act respecting fugitives from justice, and persons escaping from the service of their masters,' approved February 12, 1793; or of an act to amend and supplementary to said act, approved 18th September, 1850; whether such conviction were by criminal proceeding or by civil action for the recovery of any penalty prescribed by either of said acts, in any courts of the United States, or of any State or Territory, of any offence deemed infamous, shall be entitled to vote at any election, or to hold any office in this Territory: *And provided further*, That if any person offering to vote shall be challenged and required to take an oath or affirmation, to be administered by one of the judges of the election, that he will *sustain* the provisions of the above recited acts of Congress and of the act entitled 'An act to organize the Territories of Nebraska and Kansas,' approved May 30, 1854, *and shall refuse to take such oath or affirmation, the vote of such person shall be rejected.*"

What was the object of these unusual provisoes? It was not to ascertain if the person offering to vote was a free white male citizen of the United States, or a free male Indian made a citizen by treaty or otherwise, or whether such were over the age of twenty-one years, or *inhabitants* of the Territory, or had paid a territorial tax, or had previously voted at the same election, or had ever been convicted of infamous crimes or felonies. The oath required was not a test of the qualification of voters, nor was it intended to be. Its plain purpose and *avowed object* was to drive from the polls and disfranchise a very large portion of the people of Kansas. That such was the purpose, and the avowed purpose, of this law we have the most reliable information, and we believe we could have proved it by sworn witnesses of

undoubted veracity had we been allowed to do so. It is true, the qualifications of voters was a matter for the legislative assembly to determine, but this provision is not one of qualification at all. It in no way relates to the qualifications prescribed; it is not general in its application, and is but an invidious and unjust mode of disfranchisement, reaching only the person challenged. It required every such person, in advance of being legally called upon to act, to swear that he would *sustain* the provisions of the fugitive slave laws of 1793 and 1850. There are thousands of citizens in all parts of the Union that believe it to be the duty of the *States* to provide for the rendition of fugitives, and that the law of Congress is unconstitutional. Others, who would be willing to act, if called upon by the officers of the law, to aid in the capture of fugitives, yet, at the same time, they would scorn and refuse, as a test of their right to vote, to be sworn into a body of catch-polls to pursue, capture, and return vagabond slaves. Others, and thousands of those, too, south as well as north, are conscientiously opposed to these fugitive slave laws, and desire their modification or repeal. But, according to this Kansas election law, every man *challenged* was required to swear, in effect, not only that he would aid in enforcing those laws, but that he would *sustain, maintain*, and continue them as they are forever. He must do this or lose his vote. If the free State men had seized the first Territorial legislature, and had passed a law requiring every voter, when challenged, and before he should be allowed to vote, to swear that slavery was a moral, social, and political evil, and that he would forever oppose, by all lawful means, its introduction or establishment in the Territory, it would have been no more unjust to the pro-slavery party than was that law already quoted to the free-State party. It was not only unjust, but it was in violation of the spirit of the act creating the Territory, as well as the Constitution of the United States. Its object was not the purity of elections, but the perpetuation of power in the hands which then held it.

But it seems unnecessary to discuss it further. Its like had never before been heard of in a free country; and so generally did its monstrous and despotic character meet with public condemnation that in February, 1857, it was, with several other statutes, quite as disgraceful, repealed by the same party that had enacted it. This, however, was not done until the effects of its operation had become deep and permanent in the affairs of the Territory. The same legislature which passed the law we have just considered, passed also an act in July, 1855, "for the call of a convention to form a State constitution," by which the sense of "the people," for and against a convention, was to be taken "at the general election to come off in October, 1856," at which "all persons qualified by the laws of the Territory to vote for members of the general assembly *should* be entitled to vote for or against said convention," but subject to the exceptions and challenges provided in the eleventh section of the election law already quoted. Thus it will be seen that the "sense of the people" provided to be taken was in fact not the sense of "the whole people," but the sense only of that portion who were not disfranchised by the act of legislation we have considered. "The people" were not left free to exercise

their rights, but a large portion of them were, by the act of the legislature, (as it was intended they should be,) driven from the polls, and their views choked out by test oaths unlawfully and unjustly forced upon them by the party that had succeeded in making itself dominant in Kansas. At the same October election, and under the same law, a new house of representatives was chosen, the council still holding over under the first election. The result of this election was in no doubt. The act of the legislature had done its work. The free State men, unwilling to submit to the insults, indignities, and disabilities imposed upon them by this law, withdrew from the polls. All opposition to the pro-slavery party was at an end, and its candidates were unanimously returned. The territorial power seemed entailed in fee to the party in possession, and this law intended to make that possession perpetual.

The vote upon the question of "convention" or "no convention" was a meagre one of a few hundreds only. We have not been allowed to procure the official returns of this vote, nor are we aware that any such ever was made or published. We are informed by what we rely upon as good authority that the vote was a very trifling one, very few taking any interest in it whatever, and but a few hundred only were cast in the entire Territory. It is true that the majority assert in their resolutions that this vote is "important," yet they have taken good care not to obtain it officially or otherwise. The majority say "the vote was *almost unanimous* for the legislature to call a convention and to define its duties. But few votes were cast against it." They might have added with equal truth "but few were cast for it." "The people" took no part in that election; and it is incorrect to say that by it the sense of the people was taken and found to be "for a convention."

The whole thing would be a farce were it not a stupendous political outrage. We have thus examined these laws under which the Le-compton constitution originated, and the facts connected with the same, up to this point, because we were directed to do so by the order of the House, and because the President and a majority of the committee lay great stress upon them, as having been fair, legal, and regular, and as having afforded "the people" of Kansas full and free opportunity of deciding against a convention, had they been disposed to take part in the elections. With entire confidence we pronounced this alleged taking of the sense of the people to have been *unfair, irregular, and illegal*, and the pretended return (if there ever was one) *not the voice of the people of Kansas*. The law under which the election of 1856 was held, and the election itself, were fraudulent, deceitful, and unjust, and neither are entitled to any respect whatever. Upon the result of this simulated vote, however, the legislature, (elected under the same loose enactment,) on the 19th of February, 1857; passed, over the veto of Governor Geary, "An act to provide for the taking a census and the election of delegates to a convention." The first section of the law enacted—

"That for the purpose of making an enumeration of the inhabitants entitled to vote under the provisions of this act, an apportionment, and an election of members of a convention, it shall be the duty of the

sheriffs of the several counties in Kansas Territory, and they are hereby required, between the first day of March and the first day of April, eighteen hundred and fifty-seven, to make an enumeration of all the free male inhabitants, citizens of the United States, over twenty-one years of age, and all other white persons actually residing within their respective counties," &c.

This act clearly required that there should be an enumeration of "*all free male inhabitants*," &c. Was this law complied with? It will be borne in mind that all the offices of the Territory were in the hands of that party which had first seized the reins of government. These officers were to take this census and make the registration, but so imperfectly or corruptly was it done in some counties, and so large a number were omitted altogether in others, that the force and effect of the law were destroyed. There were registered under this law 9,251 voters, whether fairly or not may be judged from the conduct of those who seemed to control the whole matter. The census was taken but in twelve of the thirty-four counties, leaving twenty-two in which no census was taken. In the twelve counties where the census was taken there were found to be 25,321 inhabitants. In the same counties there were found and registered 7,854 voters. This would give us the ratio of voters to the whole population as *one to three and twenty-two hundredths*. Looking now to the returns of the October election for delegate to Congress, we find there were polled in the counties not registered 1,693 votes, which, on the ratio above ascertained, would give for their population 5,451 inhabitants, the vote and the population being about one-seventh of that of the entire Territory, while eight of the thirty-four counties returned no votes at the October election, and are left out of the estimate. This number of unregistered voters would have been entitled to at least nine delegates in the convention. The total vote of the Territory for Congress in October last was 11,687, and the total vote for governor in January last was 13,420, from which at least 3,000 illegal votes should be deducted; but, considering the entire vote as legal, we shall then have, upon the ratio above ascertained, taking the October election as the basis, 37,400, and taking the entire January vote as the basis, 42,945 as the whole population of the Territory. It would seem, after making every allowance, that 45,000 is as large a number as can possibly be claimed by any one upon any basis of estimate.

With these facts before us, it is unaccountable that the committee should refuse to consider the subject of population. They say that it is one of the usual subjects of inquiry. Why, then, not consider it now? Are all the usual rules, practices, and requirements of the country connected with the admission of new States to be ignored in the case of Kansas? The undersigned think it a very material fact connected with the propriety of the admission of this State under the Lecompton constitution. Are we to commence admitting States with not half population enough to entitle them to a representative in this House, except as a matter of grace? And is Kansas, for her alleged rebellion, to be made the first recipient of your generosity? Let this example be once set, and Nebraska and Washington may come next year with one-half the population of Kansas. If we are to sink below

the federal ratio it will be impossible to fix another line. The committee say "the sufficiency of the population of Kansas seems to be conceded on all sides." This, it is true, is a shorter method of disposing of this important inquiry than by an examination of the facts; but it has never been so conceded by us. We hold it next to indispensable that a Territory applying for admission into the Union shall have a population equal to that fixed by law as the ratio of representation in the House of Representatives. Kansas certainly has not one-half that number, and for this reason alone ought not to be admitted into the Union, to hold in the Senate a power equal to that of the States of New York and Virginia; and to have an equal voice with either of them in the election of President of the United States, if an election by the House of Representatives should be made. Nothing but the most extraordinary circumstances could induce us to consent to such an act.

But, returning to this so called "registration of votes," it will be seen that Doniphan county is returned with nearly as many votes as Douglas, when it had, notoriously, but about one-half as many—Lawrence, the largest town in the Territory next to Leavenworth, being in Douglas county. Johnson county is returned with 496 votes; yet, when the census was taken and when the vote was cast, no white man could have a legal residence in that county. It was the Shawnee reserve, and excluded from settlement by law. Yet it sent three members to the convention, all non-submissionists.

The majority report states that Shawnee, Richardson, and Davis had 283 votes. This is not so stated in the governor's proclamation. No census was taken in either of these counties except Shawnee, and not one-third of the votes were taken in that county. Richardson and Davis are well settled counties, lying on the Kansas river, and either of them having as many votes as were returned from Shawnee. So notoriously unjust was the return for Shawnee, that Judge Elmore, who was a delegate from that county in the convention, claimed that four members were entitled to seats from it, and that number was, in fact, elected, but two only were allowed their seats.

Bourbon, McGhee, Dorn, and Allen are returned with 645 votes, yet no census was taken except in Bourbon, and much of that was fraudulent. No census was taken in either of the other counties, though all have some population, and McGhee returned at the October election some 1,100 votes! These facts are furnished by intelligent and reliable gentlemen who have lived in Kansas for more than three years, and they could have been fully proved had the minority been allowed to call witnesses. Now, with these returns, some counties omitted entirely, others in part, others again fraudulently returned beyond their true population, it cannot be justly said the delegates elected were the delegates of "the people of Kansas," and that the constitution which they formed was the constitution of the people of Kansas. We have already shown that the unjust laws of the Territory disabled, as they were intended to do, a large portion of the citizens of the Territory from voting on the question of holding a convention, and in the election of the legislature, which passed the act

providing for the election of delegates, so that neither of their acts were the acts of the people of Kansas, but of a part of the people only.

But it is said by the majority in explanation of the non-registration of voters in the disfranchised counties—which we have shown would have been entitled to nine members of the convention, representing near 6,000 inhabitants, and which would have changed the whole character of the convention—that they “prevented the registry themselves,” and that it was the result of their own wrong. What is the proof of this assertion? All the officers of the Territory were of the party who held the legislature and derived their offices from it, and were to hold them for six years. This was one of the means taken by that body to perpetuate the power of their party, and done in violation of the spirit of the territorial act. Upon them rested the duty of making this registration and census. Why did they not do it? It is said that the free-State men would not let them do it, that they made threats against those who should attempt to make this registration, and we have seen the *ex parte* statements of one George Wilson, who volunteered as a witness, and says “that the life of any one attempting to execute the law in that particular was in danger, and the foregoing threats were the cause that prevented the taking of the census in Anderson county within the prescribed time.” He also swears:

“In regard to Passmore Williams, judge of probate for Allen county, members of the so called free-State party stated to me, in person, that if he attempted to execute the law and did not leave they would kill him; and I know the fact that he did not so execute the law, and left the county, because he believed his life in danger. Mr. Williams is from Illinois, and is a free-State man, but belongs to the Democratic party.

“In regard to Esquire Yocum, judge of probate for Franklin county, he left the county and the Territory on account of losing his negro property and having his life menaced. The office being vacant, the legislature which passed the census law appointed a new judge of probate and other officers, who refused to serve, alleging as a reason that they were afraid so doing would cost them their lives. Consequently no census was taken, and no legal election held.”

Are these rambling assertions sufficient to justify shutting near six thousand people in the unregistered counties out of the convention? Is a public officer to abandon his post and cease effort to discharge his duty because some scoundrel utters a threat against him? Why does he not give the names of those who threatened this violence? Who made the threats? Who was bent on violence? When and where was it done? Why were they not reported to the governor, who with his *posse comitatus* of dragoons was ready to enforce the law and bring the offenders to justice? Let us have specifications and facts in the shape of testimony before we thus excuse public officers from the discharge of their duty, and condemn *whole counties* to suffer from these charges, and to be shut out of the convention and be deprived of all opportunity of participating in forming their constitution. This hearsay talk about Passmore Williams and Esquire Yocum is not evidence of any kind. It is doubtless all that could be procured,

and we are left fully impressed with the fact that these counties were disfranchised by the same power and interest that disfranchised so many voters under the act of 1855, and that it was done for the same reason. The bulk of the free-State men were not registered, not because of their own wrong, but because of the intention of the party in power that they should not vote, exclusion from the registry being in effect exclusion from the polls. These facts the minority of the committee were ready to sustain by competent proof had the majority allowed them to do it.

The seventh section of the law providing for the election of delegates to the convention declares :

"It shall be the duty of the governor and secretary of the Territory, *as soon as the census shall be completed and returns made*, to proceed to make an apportionment of the members for the convention among the different counties and election districts in said Territory, in the following manner: the whole number of legal voters shall be divided by sixty, &c.: *Provided*, That the loss in the number of members, caused by the fraction remaining in the several counties in the division of the legal voters thereof, shall be compensated by assigning so many counties or districts as have the largest fraction an additional member for its fraction, as may be necessary to make the whole number of representatives sixty."

The plain intent of this law is, that the apportionment of delegates to the convention was not to be made *until the census should be completed and the returns of such complete census made*. The census never was completed; nor were returns of a complete census ever made, and the apportionment was therefore illegal. Mr. Stanton, the then acting governor, has since publicly declared as much in his speech, lately made in the city of New York. He said:

"I could not know what was the population of these interior and distant counties. I was not even informed correctly whether there was any considerable population in them which might claim a representation in the convention. I waited with great anxiety when the returns began to come to me, as secretary and acting governor, for the returns from the nineteen counties that had been wholly neglected. I had not been informed whether in those counties the officers had taken the census or not, except perhaps in relation to one or two of them, and I had no power to force the officers to do their duty; I had no power to appoint officers where there were any to perform those duties; *and the people in those counties, whatever might have been their disposition, were absolutely deprived of the opportunity of representation in that convention*. Now, I have been denounced, especially by some of the papers in the Territory, and perhaps out of it, for having made the apportionment when I did. I have said, and I repeat it again, *that if I had then known what I have since ascertained, and what I now believe and know to be true, I should have hesitated before I should have made an apportionment which should have brought about the state of things that now exists*. I should have suffered the whole law to fail. I would have had no convention representing one-half of the Territory, although, gentlemen, that half undoubtedly represented much the larger portion of the population; but I would have had no such con-

vention; I would have been the instrument in bringing about no such meeting, if I had supposed or dreamed for a single moment that they could have attempted to carry out the plan which they subsequently adopted, and are now endeavoring to force upon that people.

"But, under the circumstances, without information, *supposing, as I did then, that the people who had refused to go into this election, or to go into the process of registration, were in some measure factious, and not justified in what they were doing, and not knowing the character of the population in the other counties, or whether they had any population at all, or any considerable population, and being under the necessity of acting by a particular time, (for the returns were to be made on the 1st of May, in my office, and the election was to take place on the 15th of June,) I say, under the pressure of these circumstances, I could do nothing but what I did.* I waited until the very last moment, (somewhere about the 21st of May,) before I made the apportionment, in order to give notice that might go to the distant parts of the Territory, for a part of the law required ten days' notice before the election could take place; and I waited with the expectation that Governor Walker would come, so that I could have the benefit of his advice; for if he were there, it would have been his duty, and not mine, to make the apportionment. *The most important facts which bear upon the case have come to my knowledge since the act by which I apportioned the Territory for the election of the sixty delegates who composed the constitutional convention.*"

This shows that the apportionment by the acting governor was made under a misapprehension of the facts, and had he known at the time he made it the real state of affairs, it would not have been done, and from the letter as well as spirit of the law it ought never to have been done. If an apportionment could have been made with part of the counties left out, they could all have been left out but such ones as the officers saw fit to return; and thus nine-tenths of the people might have been excluded from representation in the convention. Indeed, if but a single county had been returned, and all the delegates apportioned to that county, the apportionment would have been as regular and as legal, and the election of delegates and all the subsequent proceedings would have been as regular and legal as they now are, and we could with the same reason and same propriety have been met by the President and the majority of the committee with the cool declaration that "it is impossible that any people could have proceeded with more regularity in the formation of a constitution than the people of Kansas have done."

But the election of delegates came off. The votes were cast mainly upon one side, for the reasons already stated. At the time of the election many of the candidates were pledged to provide for a submission of the constitution to the people for ratification or rejection, and were elected upon such pledges. A large portion of the pro-slavery men of the Territory desired this submission, knowing well what would be the state of feeling among the people of the Territory if this should not be done. The convention assembled on the 7th day of September, and was found to have several of its members citizens of Missouri, enough, indeed, to change the result of its action on the

slavery question. This, though a plain violation of law, seems to have passed along without objection. It was found that the submissionists and the non-submissionists were nearly equal, and as a matter of prudence they adjourned to meet again on the third Monday of October. What was the cause or design of this adjournment can be very well understood, and could have been as clearly proved had opportunity been afforded. The October election for the territorial legislature was at hand, and as Gov. Walker and Secretary Stanton had been using their best efforts to quiet the Territory and bring the whole people to the polls, the majority of the convention thought it unsafe to let their real purposes be known prior to that election, fearing that the consequences might prove disastrous to their party, notwithstanding the extraordinary steps they had taken to maintain its ascendancy. Yet, if the October election should result against them, it would be necessary to take still further action to prevent their grasp being loosened. Before the convention adjourned, however, they had taken action upon the claim of the delegates elected from the counties of Anderson and Franklin. Secretary Stanton had given certificates of election to R. Gilpatrick and J. Y. Campbell as delegates elect from the county of Anderson, but stating that the census returns of that county were informal. He also gave a certificate of election to Wm. R. Judson as delegate elect from the county of Franklin. The elections in these counties were held on the day required by law, but neither of them were included in the apportionment of delegates. Judge Elmore introduced the certificates of election of Messrs. Gilpatrick and Campbell, and on his motion they were referred to a select committee of five. Mr. Wells introduced the certificate of Mr. Judson, and, on motion of Mr. Easton, it was referred to the committee on elections. On the 10th of September Judge Elmore, as chairman of the select committee in the Anderson county election case, submitted a report in favor of Messrs. Gilpatrick's and Campbell's claim to seats in the convention, but the convention put off the consideration of the subject until they should reassemble after their adjournment over. It was apparent that they would be excluded by the convention, and to prevent any further annoyance to themselves and indignities from the body that had predetermined to reject them, they withdrew their certificates, as is understood, on the advice of Judge Elmore. It is not correct, as has been stated, that they voluntarily withdrew from this convention. Mr. Judson was also excluded; and having now the organization to their own liking, they adjourned, as we have already stated, to the third Monday of October.

The October election for members of the legislature came off. The efforts of Governor Walker and Secretary Stanton, backed up as they were by the approbation of the President, and by his pledges and assurances, both personal and official, that he would sustain his territorial officers in their efforts to have the elections fairly conducted for territorial officers, and that the submission of the constitution to the people should be full and complete, were partially successful. Confidence in the executive branch of the government began to take the place of distrust and alienation. A large portion of those who had, since the first election, abstained from the polls from the causes

already stated, believing that a better future was before them, went to the ballot-box and there fairly carried both branches of the legislature, notwithstanding the most unheard of frauds were, as usual, in many places resorted to to prevent it.

This election was the commencement of a new era in Kansas; it worked an entire revolution in the whole policy of legislation. From being decidedly pro-slavery in all its movements and objects, it became opposed to that institution; and the party whose voice had not been heard since the first contest in March, 1855, now fully in the ascendant, assumed to control all the civil affairs in the Territory. It was now evident that the popular sentiment was not only in favor of excluding slavery from Kansas, but that nothing but the most daring and unscrupulous conduct by the convention could prevent that result from accomplishment within a brief period. Public meetings were called in the south, at which the conduct of Governor Walker and the President were denounced as being at war with the rights and interests of the slaveholding States, and the President was called upon to remove the governor and secretary from office. The position was also taken by prominent public men, and by conventions and assemblies in the south, that the constitution then being framed at Lecompton ought not to be submitted to the people, but sent directly to Congress. Letters, resolutions, and addresses from all these sources were poured upon the delegates, to affect as far as possible their action. With this change of affairs in the Territory, and this position of sentiment proclaimed in the south, the policy of the President underwent a like change. The official organ of the administration, as late as July, declared that there was no way of ascertaining the will of the people—

“Except by their own direct expression at the polls. *A constitution* not subjected to that test, no matter what it contains, will never be acknowledged by its opponents as containing any thing but fraud. A plausible color might be given to this assertion by the argument that members of the convention could have no motive for refusing to submit their work to their constituents, except a consciousness that the majority would condemn it. We confess that we should find some difficulty in answering this. What other motive could they have?

“We do most devoutly believe that unless the constitution of Kansas be submitted to the direct vote of the people, the unhappy controversy which has heretofore raged in that Territory will be prolonged for an indefinite time to come. We are equally well convinced that the will of the majority, whether it be for or against slavery, will finally triumph, though it may be after years of strife, disastrous to the best interests of the country, and dangerous, it may be, to the peace and safety of the whole Union.

“Again: This movement of the territorial authorities to form a constitution is made, not in the regular way, in pursuance of an enabling and authorizing act of Congress, but in the mere motion of the territorial legislature itself. Nay, it has been begun and carried on in the teeth of a refusal by Congress to pass such an act. This irregularity is not fatal. There are other cases in which it was overlooked. But it can be waived only in consideration of the fact that the people have expressed their will in unmistakable language. If we dispense with the legal forms of proceedings, we must have the substance.

"We think, for these reasons, that Governor Walker, in advocating a submission of the constitution to a vote of the people, acted with wisdom and justice, and followed the only line of policy which promises to settle this vexed question either rightly or satisfactorily. In this respect, at least, he has done nothing worthy of death or bonds."

This official journal, that had in July used the language already quoted, faced about, and began to denounce every one who held like opinions as apostates, renegades, demagogues, traitors, black republicans, &c. An individual holding an office in one of the departments of the government, and drawing his pay from the federal treasury, was despatched as an emissary to Leecompton, and proceeded there to instruct the people of Kansas, through the delegates in the convention, how to manage their domestic institutions *in their own way*. This was done, and the constitution engineered through the convention in such a form that, while it pretended to submit the slavery clause to the people, it in reality did no such thing. In a letter published in the Jackson Mississippian of November 27, and written from Leecompton on the 7th of November, (the day of the adjournment of the convention,) and written, as the undersigned have strong reason to believe, (and think they could have proved had the majority of the committee allowed them,) by the emissary already alluded to, or at his connivance, these views of the committee are fully sustained. After giving a history of the action of the convention upon the mode of submission of the slavery clause, and showing an amount of legislative jugglery unmatched in history, he says:

"Thus you see that whilst, by submitting the question *in this form*, they are bound to have a ratification of the one or the other, and that while it *seems to be* an election between a free State and pro-slavery constitution, it is, *in fact*, but a question of the *future introduction of slavery* that is in controversy, and yet it furnishes our friends in Congress a basis on which to rest their vindication of the admission of Kansas as a State under it into the Union, while they would not have it sent directly from the convention.

"*It is the very best proposition for making Kansas a slave State that was submitted for the consideration of the convention.* In addition to what I have stated, it embraces a provision continuing in force all existing laws of the Territory until repealed by the legislature of the State to be elected under the provisions of this constitution."

The Leecompton National Democrat of November 19, published on the spot, says:

"THE CONSTITUTION.

"We publish this instrument to-day in full. It occupies almost the whole of our available space, and precludes the possibility of any extended remarks.

"Our opinion of the final action of the convention, as briefly given in our last issue, has not been changed by such an examination of the constitution as we have been able to give it. We still think that the whole subject should have been submitted to the people. But, at all events, the slavery question should have been fully and fairly put to the people for their decision. This, as we understand it, has not

been done. *No matter how the people may vote, if this constitution should prevail, Kansas will be a slave State.* We would not object to this result if the people should so will it; but we think they should have a full opportunity to determine the character of the institutions of the new State."

The Charleston Mercury, shortly after the opening of the present session of Congress, said:

"We lay before our readers this morning the message of the President of the United States. It is, as was to be expected, an able document, sound in almost all of its positions, and worthy of the Chief Magistrate of our great confederated republic. The main point of difficulty and delicacy is in the affairs of Kansas. He thinks that the convention of Kansas, in submitting only the clause in the constitution relating to slavery, has fulfilled what he supposes to be the requisition of the Kansas-Nebraska act. We are equally satisfied with the action of the convention. We differ, too, with the President as to what is submitted to the vote of the people. *We do not think that the question of slavery or no slavery is submitted to the vote of the people. Whether the clause in the constitution is voted out or voted in, slavery exists, and has a guaranty in the constitution that it shall not be interfered with; whilst, if the slavery party in Kansas can keep or get the majority of the legislature, they may open wide the door for the immigration of slaves.* But this also is a small matter of difference with the President. It is enough for us that he goes with the South in the policy of admitting Kansas into the Union with the constitution she shall present, whether with or without the slavery clause. We heartily support his policy, although we may not agree in all his reasoning. And, above all, we rejoice for the sake of our old partiality, and our advocacy of him before he reached the illustrious dignity of the presidency, that he has not soiled his fame by identifying it with Walker."

These extracts go to show that the view taken by the President and the majority of the committee that the slavery question had been *fairly submitted* to the people of Kansas is incorrect. Not only was every man who did not favor the constitution itself excluded from the polls, but even those who went and voted were lending themselves as instruments to a fraud. It was like submitting to the ancient test of witchcraft, where, if the accused upon being thrown into deep water floated, he was adjudged guilty, taken out and hanged; but if he sunk and was *drowned*, he was adjudged not guilty—the choice between the verdicts being quite immaterial.

The journal of the convention, except that portion covering the last three or four days of the session, was from some source placed in the hands of the majority. The most interesting portion embracing the closing acts of the convention are missing, and will probably remain so until this question is disposed of. Those missing sheets would give us the votes upon the various questions and propositions for submission, showing the object in adopting the mode finally agreed upon. They would show that non-submission was caused by a minority of the convention. They would show that, but for the fraudulent getting up of the convention, the work would have been of a very different character. They would enable us to see who violated

pledges, who trampled down parliamentary law and the rules and orders of the convention itself, to accomplish this tricky form of submission, and to consummate a scheme of villany fully intensified.

The minority desired to procure these missing sheets, but they were not permitted to do so, although it is believed they are in the city, but suppressed for important but discreditable reasons. The debates of the convention, taken by its order, formally made and entered upon the journals, were also within reach of the committee, and could have been procured had the committee been willing to have had them made public. They were as much the property of the committee as the journal itself, and as giving the only clear view of the inside workings of the convention were considered by the undersigned as of the highest value; but they also were suppressed by the persons having them in custody, and the undersigned can hardly blame those in charge of them for doing so, and thus keeping from the public eye a mass of harangues both atrocious and treasonable.

The undersigned, however, desired the whole truth presented to the House, and labored, but unsuccessfully, to that end. The constitution was not submitted to the people, because it was well known that it would be rejected by an immense majority. Yet it seems to be considered by the president and the majority of the committee that the best mode of allowing the people to regulate their affairs in their own way is not to let them have any way or voice at all in the business, but to make them subject to the dictation of the Lecompton convention. It is true that the great national convention that met at Cincinnati and made a declaration of principles for the party which elected Mr. Buchanan—

“Resolved, That we recognise the right of the people of all the Territories, including Kansas and Nebraska, acting through the LEGALLY and FAIRLY expressed WILL of a MAJORITY of ACTUAL RESIDENTS, and whenever the NUMBER OF THEIR INHABITANTS JUSTIFIES IT, to form a constitution with or without domestic slavery, and be admitted into the Union upon terms of perfect equality with the other States.”

Yet, in Kansas, there was no action by “the people” in forming this constitution, nor has there been any legally and fairly *expressed will of a majority of the people* upon this instrument or any of its provisions. The president of the convention, in his letter to the President, says that the question whether this constitution should contain a clause making Kansas a slave State or not was submitted to a vote of the people of the Territory on the 21st day of December, 1857, and resulted as follows:

“For the constitution with slavery.....	6,226
“For the constitution without slavery.....	569
	<hr/>
“Total vote for the constitution.....	6,795
	<hr/>

“The votes for the two sides of the constitution is a majority over any vote previously given at any election holden in the Territory.”

Thus the president of the convention seems to feel the force of the resolution of the democratic party that there should be legally and

fairly expressed "the will of the majority of the actual residents;" and he, to meet this, declared that "the votes of the two sides of the constitution is a majority over any vote previously given at any election holden in the Territory;" thus leaving the impression that there had been expressed, *legally* and *fairly*, the will of the majority of the actual residents. True, he does not say "so many legal votes were cast," or that "so many votes were cast," but he says "the votes for the two sides," &c., thus including the manufactured, the spurious, the fraudulent, and all, nearly one half of which have turned out to be of some one of these descriptions. The undersigned think it a safe doctrine to require that, upon all great and important changes in systems of government, there should be, when a direct submission of a question is made, a majority not simply of the *votes cast*, but a majority of the whole number. No such majority was had for this constitution of Kansas, although it is quite apparent Mr. Calhoun desires we should think so. By the testimony taken before the commissioners of Kansas, and hereto appended, it is clear that of the 6,226 pro-slavery votes cast on the 21st of December, there were 2,720 of them fraudulent, at the four precincts of Kickapoo, Delaware City, Oxford, and Shawnee. How many of like character were cast at the other precincts has not transpired. But admitting all the rest to be correct, it leaves only 3,506 legal votes cast "for the constitution with slavery," and deducting this number from the number cast on the 4th of January, as certified by Governor Denver, of 10,226 "against the constitution framed at Lecompton," it leaves a majority of 6,720, or about three to one, against that instrument in its present form. The undersigned are informed by gentlemen from Kansas that there were more than 1,000 votes cast against the Lecompton constitution on the 4th of January which were not included in the 10,226, not having been returned when the count was made; but the majority of 6,720 is sufficient for our purpose.

The total vote in October was 11,687, and the total vote for governor on the 4th of January was 13,420, from which last there should be deducted at least 2,500 illegal votes returned for the pro-slavery ticket, leaving about 10,400 as the number of votes cast on that question. And it is well known that a large number of the free State men (including Lane and his partisans) refused to vote for governor. From all the data within reach of the undersigned it would seem that the legal voters of Kansas number about 13,000; and that nearly all the legal votes in the Territory were cast on the elections of the 21st of December and 4th of January for and against the constitution, and rejecting it by an unexampled majority of four to one. But it is said that this vote of the 4th of January is irregular and must not be considered. We have already shown that, if regularity is to be strictly required, the Lecompton constitution will not stand the test; that its whole history is marked by irregularities and outrages from beginning to end. But this vote of the 4th of January was a legal and valid one. It was taken under a law of the territorial legislature, which represented the whole body of the people. The law was approved by the governor of the Territory, who, in his person, represented the government of the United States. The Secretary of State, with the full

knowledge of the purposes for which Mr. Stanton had convened the territorial legislature, instructed General Denver as follows:

"The territorial legislature doubtless convened on the 7th instant, and while it remains in session its members are entitled to be secure and free in their deliberations. Its rightful action must also be respected. Should it authorize an election by the people for any purpose, this election should be held without interruption, no less than those authorized by the convention."

Gen. Cass here directed that the rightful action of the legislature, in ordering an election upon the constitution, should be held "as free from interruption as that authorized by the convention." But, whether recognized by the president and a majority of the committee or not, the vote of the 4th of January was a fair, just vote, as expressive of the will of the people of Kansas against the deceptive constitution. It was held under authority of law, and under all the solemn sanctions of official oaths and obligations; and it is amazing that any one can be willing to exclude such conclusive evidence of the popular will, and either deny its existence or treat it with contempt and disdain. This, in effect, is the action of the majority of the committee, who cannot go the length of excluding these great facts, but yet consider them neither "relevant nor material." The majority of the committee think this vote comes *too late*, even if from orderly citizens. It was the first opportunity these orderly citizens ever had to condemn the work of the Lecompton convention; and the President removed Gov. Stanton from office because he called the legislature together to enable them to speak at all. It seems to have been his will that the people should have *no voice in the matter*. The only difference is, that the majority of the committee thinks the vote came *too late*, while the President thinks it ought not to come *at all*. The election was only two weeks after the one ordered by the convention, and it was upon a different form of submission, which the legislature had a right to propose. You have not admitted Kansas yet; you are under no moral or political obligation to do so. Twenty-five hundred persons, citizens of Kansas, have asked you to do it; ten thousand petition and *ask you not to do it*. The majority of the committee say that twenty-five hundred shall be obeyed, and the ten thousand are slapped in the face and told to "begone; that Congress recognizes the doctrine of popular sovereignty, and therefore the minority must rule." The argument is even made in some quarters that minorities ought to make constitutions and ought to rule. So thinks the despot who wants but one to compose that minority, carrying out the theory that the smaller the minority the more perfect the rule. It is true that the convention attempted to destroy the territorial legislative power; but we are entirely clear that in this attempt their wickedness of design exceeded their ability for its successful perpetration, and that territorial authorities, in all their branches, have yet full power to act until Congress shall admit the State into the Union.

The committee devote about one-half of their entire report to a review of the opinions of Governor Walker, Secretary Stanton, and Mr. Douglas. What those opinions have to do with the inquiries and investigations ordered by the House, it is difficult for the undersigned

to see. Suppose every opinion those gentlemen ever advanced to be wrong, it still does not prove that the Lecompton constitution embodies the will of the people of Kansas, and ought therefore to be sustained by Congress. The committee, in their argument against the submission of the constitution to the people, say:

"The formation of a constitution requires, it is true, the exercise of sovereign power, and so does the commonest act of legislation. If the power to do one can be exercised by an agent or representative, so can the other; and such has been the uniform understanding in this country from the beginning of our history. The Constitution of the United States was not ratified by a popular vote. In all the States it was adopted by conventions chosen by the people, and clothed with full powers to act for them."

Against this attempt to drag constitutions down to the level of every-day common-place legislation we protest. It is true the original powers of each are in the people. But legislators, in the exercise of their powers, have to submit their action to the scrutiny of the people's executive, to proceed in subordination to constitutions, and their enactments are within the reach of the courts for annulment if found to be in contravention of the organic law. The delegates in conventions are subject to no restraints by executive power, by judicial tribunals, or by constitutions. They themselves are the architects of all these. There is but one authority to which they must submit their work; that is the authority of the people. If *they* approve, well; if not, the work is void. As these conventions prepare the highest of laws, their force must be contingent upon the approval of the highest authority—that of the people. We deny that the people can delegate sovereign power to agents. If so, they cease to be sovereign when their sovereignty is so delegated, and they might transfer their own rights to liberty and life—a theory in direct hostility to republican or democratic government. The people can concede nothing by implication, and, unless a convention be specifically authorized to frame and set in motion a government, they should report their work to the people for approval. It is true the people, by acquiescence, may express their approbation of the work of their agents, and by consent waive the failure to submit. But the doctrine that a convention elected by the people can frame such government as they please, and put it in operation against the will of nine-tenths of the people, and that the Congress of the United States will sustain such government, and that upon a technicality, is both monstrous and revolting.

It is said by the committee the Constitution of the United States was not ratified by a popular vote; and this seems to be put forward as an argument why the constitution of Kansas should not be so ratified. But the Constitution of the United States was framed by a convention, and the whole work submitted to conventions in the States, and the people, in electing delegates to such conventions, did so with direct reference to their voting for or against the instrument. In fact, the people voted upon its rejection or adoption through their conventions. Will the friends of the admission of Kansas under this Lecompton instrument concede the same privilege to the people of Kansas, to wit: the election of a new convention to pass upon that

constitution? If they will, the whole difficulty can be settled in an hour; if not, let them cease to quote the adoption of the Constitution of the United States as a precedent.

A parallel is attempted to be drawn between the admission of California and that of Kansas. The committee say:

"How any person could maintain the legality of the proceedings in the California case, and deny them in Kansas, or hold that an enabling act by Congress was necessary in the Kansas case, when it was not necessary in California, is incomprehensible to this committee. They dismiss the point without further remark."

We have already shown that, in the admission of new States, whatever Congress legalizes becomes legal. No adherence to forms renders it obligatory on Congress to *admit*—no departure from them requires Congress to *reject*. Each case must stand upon its own merits, although we think the better course is to follow the usages and precedents set by the early fathers. But look at the California case. Their constitution was *adopted* by over eleven thousand majority upon a popular vote. Not one voice came from California objecting to her admission. The Kansas constitution was *rejected* by almost as great a majority, and the masses of her people are praying and protesting against her admission under it. To those of us who profess to have some regard for the popular will the difference in these cases is quite comprehensible. We "dismiss the point without further remark."

But the majority say that the five counties of Leavenworth, Atchison, Douglas, Doniphan, and Jefferson, had a majority of the whole vote of the Territory, and thirty-six out of the sixty delegates to the convention. The committee go on to say:

"Now, if it be true that the opponents of the constitution are so largely in the majority in those counties, and are so violent in their opposition, as they are represented to be, why did they not elect men to the convention who would have formed a constitution more to their liking? These counties alone, by the registry, had within four votes of two-thirds of the convention, and could have made just such a constitution as would have been most agreeable to their people. If they refused to act at the proper time why do they complain now? If others, conforming to the law, went into the convention and formed a constitution to suit themselves, was it not their fair, just, and legal right to do it? Those complaints come too late, even if they come from orderly, law-abiding citizens. As well might the thousands who abstained from the polls, or threw away their votes, at the last Presidential election, now come forward and claim that the present administration is illegal, and should be set aside, because the inaugurated Chief Magistrate did not receive a majority of all the legal voters of the United States, as for these people now to complain of the result of their own *laches* or illegal acts, or to seek to remedy it by any such irregular proceeding as the vote taken on the 4th of January against the constitution after it had been legally adopted?

Whether a majority of the people of these counties were, at the time of the election of delegates, opposed to a constitution or not, it is impossible to ascertain, and what the public sentiment might have been had

the convention done its work like an honest assembly is equally impossible to know. But it is not strange that the people of Leavenworth and Douglas and Shawnee should be violently opposed to the work of delegates, a large portion of whom had falsified pledges and attempted to cheat the people out of their dearest and inalienable rights. It is quite useless for the President or the majority of the committee to set up a standard of action for the people of Kansas which their own convention have rejected. In the 14th section of the schedule it is provided that before a change can be made in the constitution, "*two-thirds of the members of each House concurring, they shall recommend a vote of the people for a convention, and if it shall appear that a MAJORITY OF ALL CITIZENS of the State have voted for a convention, then the legislature shall provide by law for an election.*" The convention of Kansas, which the committee say was the people of Kansas, did not think it the proper mode of changing or making organic law to have it done by the few who might go and vote. The people of Kansas think there should be expressed *affirmatively* a wish for a change by a *majority of all the citizens of the Territory*, and this to be preceded by a like wish from *two-thirds of both branches of the legislature*. Now, by what reason the President and the committee undertake to say that the few hundred who go to the polls shall rule in a matter of fundamental law the many thousands who do not go to the polls when the convention, whose action they laud so highly, and which they say spoke for the people of Kansas, adopted a different and opposite rule, can only be explained from the fact that a bad cause requires ingenious defences; and there is no more analogy between the position of those who might have voted at the Presidential election and did not vote, and those who complain of wrongs perpetrated under the oppressive laws of Kansas, and in and by this convention, (all of which were beyond the reach of the people,) than there is between the President with his breakfast before him refusing to eat and Tantalus, perishing with hunger, unable to reach the fruits hanging upon the boughs around him, but which withdraw from his reach at every attempt to pluck them.

The majority of the committee hold that there is no mode of ascertaining whether the Lecompton constitution is acceptable and satisfactory to a majority of the legal voters of Kansas:

"Without polling every legal voter in the Territory, and if they had gone there and taken the vote themselves for and against the constitution, perhaps the majority might have varied from one side to the other by death, emigration, or change of opinion, before their report could have been made. That course of investigation is wholly impracticable. The only proper mode of pursuing the legitimate inquiry before Congress, in the judgment of the committee, is to ascertain whether the constitution embodied the legally and fairly-expressed will of those who by their acts acknowledge themselves to be *bona fide* citizens and constituent elements of the society or political community to be organized in a State within its jurisdiction. Those who by their acts show themselves not to be *bona fide* citizens but *mala fide* residents, and even self-acknowledged outlaws by their open hostility to all civil authority, should not be considered or taken in the count. The convention that formed the constitution was as fairly constituted

as could be with the view of allowing every *bona fide* citizen in Kansas entitled to vote to have a free opportunity to be heard in its formation. This Mr. Stanton said; this Governor Walker said; this Judge Douglas said; this, also, abundantly appears from the facts and evidence now submitted. The only correct test of the will of a majority of the *bona fide* voters of Kansas upon the subject of their constitution is that of the ballot-box, and such an expression of their will as has been there given at the proper time and place, in conformity to law. By this test a majority of them is certainly in favor of it. The majority of those going to the polls when the election of delegates, with full and plenary power took place, was largely in favor of those who made the constitution; and when the direct question on the slavery clause was submitted on the 21st December the like majority was overwhelmingly in favor of it. On the 4th of January, in the election of State officers under the constitution, it is well known that both parties joined in a vigorous contest for the organization of the State under it. Upwards of 12,000 voters participated in that election. That vote shows most clearly that the constitution is not only *acceptable*, but has been *accepted* by at least four-fifths of the voters of the territory, though it may not be entirely *satisfactory* to all of them."

Without analyzing at length this elaboration of subtilities, it is sufficient to say that the committee were not asked for their opinion whether emigration or death would have varied public opinion in Kansas before a report of the fact could be made; but they were directed to inquire whether, at the time of the adoption of the resolution under which they act, the constitution framed at Lecompton was "*acceptable and satisfactory to a majority of the legal voters of Kansas.*" This they have not done. But, in order to arrive at their conclusions, they say:

"Those who by their acts show themselves not to be *bona fide* citizens but *mala fide* residents, and even self-acknowledged outlaws by their open hostility to all civil authority, should not be considered or taken into the count. * * * The only correct test of the will of the majority of the *bona fide* voters of Kansas upon the subject of their constitution is that of the ballot-box, and such an expression of their will as has been there given at the proper time and place, in conformity to law. By this test a majority of them is certainly in favor of it."

Here it seems the committee first decided that all who did not vote at the election in October, 1856, for or against a convention, and all who did not vote at the June election, 1857, (whether registered or not,) for delegates to the convention, and all who did not vote "for the constitution" in December, 1857, are "*mala fide*" residents" or "self-acknowledged outlaws." After this assumption, as gratuitous and untenable in itself as it is uncharitable and unjust to the people of Kansas, we are prepared for any thing that may follow. But, admitting the "test," it is still untrue that a majority of the people of Kansas are in favor of the Lecompton constitution. The committee, in their report, state that 6,795 votes were cast "for the constitution" at the December election. There is no evidence of this vote but the general statement of Calhoun, a statement in itself entitled to no con-

sideration. It could have been proved before the committee, had the majority allowed it, that of this 6,795 votes nearly one-half were fraudulent and illegal. And it has been fully established by testimony taken by a commission acting under a law of the Territory that, in four precincts alone out of about one hundred and twenty in the Territory, near 3,000 illegal votes were cast on the 21st of December "for the constitution." This cuts down at a single slice the pro-constitution vote to nearly one fourth of the vote claimed by the committee in the entire Territory. If one-fourth of the votes constitute a *majority*, the undersigned have been greatly in error in their understanding of the term.

But the committee go further, and say that, at the 4th of January election for State officers, "upwards of twelve thousand voters participated;" and they add, "that vote shows most clearly that the constitution is not only *acceptable*, but *has been accepted* by at least four-fifths of the voters of the Territory." If the committee were aware of the circumstances under which that vote was cast, it is surprising that they should claim the votes cast for the Smith ticket as favoring the constitution. If they were not aware of these circumstances, we will briefly state them. The whole vote alleged to have been cast at that election for the pro-slavery ticket was 6,545; of this number there have been found to have been cast in five precincts 2,458 illegal or fraudulent votes, leaving only 4,187 as the largest number rightfully to be claimed as having been cast for that ticket. Indeed, it is believed that investigation would reject from this number a very large portion as spurious and unlawful. On the other hand, there were cast for the free State ticket 6,875 votes, being a majority over the pro-slavery ticket of 2,688 votes. These votes for the free State ticket were cast, under protest, *against* the constitution. It is a notorious fact, which cannot be denied or evaded, standing out boldly before the public view—a fact that will be recorded unhesitatingly by every historian in after time—that those votes were cast by citizens of Kansas *protesting* that they should not be considered as a recognition of the constitution; and at the moment they were cast they placed also in the ballot-box another ticket, on which was written their sentiments "*against the Lecompton constitution*," and 10,226 voters of the Territory so declared their sentiments on that day at the polls. The whole free State ticket were understood to be publicly pledged against putting the Lecompton constitution into operation, and were voted for solely to defeat the operation of that instrument. These free State officers, thus elected under the constitution, if you please, have all joined in a petition to Congress to reject it. The people went to the polls and plead to the jurisdiction of your tribunal, and you, with star chamber justice and magnanimity, claim that *plea* as an acknowledgment of the very thing they denied. The people of Kansas have been unfortunate. If they decline to vote, you call them rebels and self acknowledged outlaws; if they vote, you overwhelm them with frauds, and say that voting is an acknowledgment that their protests against your outrages are untrue. You place them between the blades of your quibbling logic, and whether one falls or the other rises, their rights are cut off with the same cruel certainty. Not a vote has ever been taken in the Ter-

ritory of Kansas relating to this Lecompton constitution that has not demonstrated the fact that it is *both unacceptable and unsatisfactory* to a majority of the legal voters of Kansas. And yet the committee weave a conclusion directly the reverse of the facts.

But the President advises us that it is "wise to reflect upon the benefits to Kansas and the whole country which would result from its immediate admission into the Union." The undersigned can see no such benefits, but consequences disastrous to Kansas and fraught with danger to the whole country. The idea of an irresponsible power coercing a people to submit to a government which they never formed, and which they despise and abhor, and this while they stand imploringly before you, beseeching you not to do it, is so repugnant to our every sense of justice, and so galling to that spirit of independence which marks the American character, that it can hardly be expected that the people of Kansas will quietly submit to it. It would be, indeed, a matter for themselves to determine; but, judging from the past, we think no other results could follow than to inflame an already excited public feeling to acts of resistance which could be justified by as high principles as ever governed men in resistance to tyranny and oppression. But were it even certain that the fond anticipations of the President could be realized by the admission of Kansas, it would not, still, justify the perpetration of so great a wrong. No temporary advantage can ever compensate for a departure from a just principle in government.

The President and the majority of the committee think that a large number of the States would keenly feel the rejection of Kansas, and would look upon her rejection with extreme sensitiveness and alarm. If so, we think it would be wholly without cause. But we think a still larger number would look upon her admission with equal sensitiveness and alarm. Not because her constitution recognizes slavery, for we undertake to say that, upon the application of a new State for admission into the Union, if a majority of its voters express their will legally and fairly in favor of that domestic institution, such fact is not, and will not be, with the people of the non-slaveholding States, a cause for rejection or objection; but the people of the whole country would feel, as they ought to feel, that, in this admission of Kansas, Congress would have endorsed and legitimated the most glaring irregularities, frauds, corruptions, and outrages, and would have finished their disreputable work with a violation if not a deadly blow at the first principles of civil liberty. The whole progress of this Kansas constitution, from the beginning, has been irregular, unjust, and corrupt. No State has ever presented herself for admission with a constitution constructed under such irregularities and through such violations of law. No precedent can be found for dragging a State into the Union against the will of three-fourths of her people. It is not *admitting* a sovereign State into the Union, but it is the coercion of a subject province.

The committee conclude their report as follows:

"The argument that Congress, by the admission, will be forcing any institution whatever upon an unwilling people is as gratuitous as it is groundless, even if a majority there be opposed to slavery. For,

by the Constitution of the United States, slavery is as much forced upon them as by the constitution of Kansas."

It is difficult to match the boldness of this first assertion. The people of Kansas have declared through every authoritative form that they are opposed to becoming a State under this constitution. Congress has alone the power to make them a State by admitting them into the Union. If that act shall be done by Congress, a constitution, with all the institutions which it provides and guarantees, will be forced upon an unwilling people, and whether the committee held such statement "gratuitous and groundless," or not, is a matter of very little consequence. The "argument" is nevertheless true. Whether "by the Constitution of the United States slavery is as much forced upon them as by the constitution of Kansas" is a matter into which the committee were not directed to inquire, and this opinion, uttered as it is in this connexion, is the merest *obiter dictum*.

The undersigned have had placed in their possession since the committee adjourned a full report of all the testimony taken before the Kansas territorial commission, duly certified and authenticated, which, with the report thereon by the commissioners before whom it was taken, is attached to this report. It is impossible to characterize the frauds of the elections of the 21st of December and the 4th of January as they deserve. We call to this evidence the attention of the House and the country, merely remarking that it is the settled conviction of the undersigned that these elections were not more unfairly and unjustly conducted than many which had preceded them.

They also append to this report a copy of the act of July, 1855; the act of February 19, 1857; the proclamation of Secretary Stanton of May 20, 1857; an extract from the executive minutes; also a copy of the Lecompton constitution, and the letter of Calhoun accompanying the same; also the vote of the people on the 4th of January (taken under the law of the territory) for and against the constitution.

They also present, as connected with the action of the committee, a record of its proceedings, and the views of the minority thereon.

In conclusion of this subject we will only add that, being fully convinced that this Lecompton constitution is neither acceptable nor satisfactory to any considerable number of the people of Kansas, much less to a majority of them; that it is not their act; that it neither speaks their sentiments nor embodies their will; that it is the offspring of fraud, corruption, and villainy; that the laws under which it was originated and the proceedings connected with its prosecution have been informal, irregular, and unjust; that the instrument bears upon its own face and in its own composition ample evidence of its base origin and deceitful pretensions, we think it would be highly improper to admit Kansas into the Union as a State under this constitution, and that such act would not only be unjust to the people of that Territory, but it would be dangerous to the peace and welfare of the whole country.

THOS. L. HARRIS,
GARNETT B. ADRAIN.

MESSAGE
OF
THE PRESIDENT OF THE UNITED STATES,

COMMUNICATING,

In compliance with a resolution of the Senate of the 18th December, information in relation to a return of votes taken in Kansas at the election in October, 1856, the act of the territorial legislature providing for that election, and other information connected therewith.

JANUARY 1858.—Read, referred to the Committee on Territories, and ordered to be printed.

To the Senate of the United States :

In answer to the resolution of the Senate of the 18th of last month, requesting certain information relative to the Territory of Kansas, I transmit a report from the Secretary of State, and the documents by which it was accompanied.

JAMES BUCHANAN.

WASHINGTON, January 6, 1858.

DEPARTMENT OF STATE,
Washington, January 7, 1858.

The Secretary of State, to whom was referred the resolution of the Senate of the 18th ultimo, requesting the President "to communicate to the Senate copies of the following documents :

"1. Return of the votes taken in Kansas Territory at the October election, 1856, upon the question of calling a convention to frame a constitution and State government ;

"2. Act of the territorial legislature (in obedience to that vote) calling such a convention and providing for the apportionment and election of delegates to the same ;

"3. The census and registration of voters, by counties or precincts, as taken under that act ;

"4. The apportionment of delegates made upon the returns of such census and registration ;

"5. Returns of the election, by counties, for delegates to the convention ;

"6. Returns of the last election by counties, for members of the territorial legislature and a delegate in Congress ;

"7. Proclamations of the governor or acting governor upon the subject of the census, registration of voters, and the several elections hereinbefore specified ;

"8. Journal of the convention held at Lecompton to frame a constitution and State government ;"

Has the honor to report, that the documents mentioned in the 3d, 4th, 5th, 6th, 7th, and 8th paragraphs are not on file, and have never been received at this department.

The return of voters, also, requested in the first paragraph, has not reached the department, but a copy of the law of the Territory of Kansas of 1855, pursuant to which the question of calling a convention to frame a constitution for that Territory was submitted to the vote of the people thereof, is hereunto annexed.

The other paper hereunto attached is the transcript of the act of the territorial legislature of Kansas, "to provide for the taking a census, and election for delegates to a convention," passed on the 19th day of February, 1857, called for in the second paragraph of the resolution.

Respectfully submitted.

LEWIS CASS.

To the PRESIDENT.

AN ACT to provide for the call of a convention to form a State constitution.

Be it enacted by the governor and legislative assembly of the Territory of Kansas as follows :

SECTION 1. That there shall be, at the first general election to come off in October, 1856, a poll opened at the several places of voting throughout this Territory for taking the sense of the people of this Territory upon the expediency of calling a convention to form a State constitution.

SEC. 2. It shall be the duty of the judges at the several election precincts in this Territory, at the election aforesaid, to cause a poll to be opened, which poll shall contain two columns, one to be headed "convention," the other "no convention;" and they shall cause the vote of each individual voter to be set in the appropriate column.

SEC. 3. All persons qualified by the laws of the Territory to vote for members of the general assembly shall be entitled to vote for or against said convention.

SEC. 4. At the close of said election, at the several precincts in this Territory, the judges thereof shall cause an abstract of the votes given for and against a convention to be made out and certified to the secretary of the Territory.

SEC. 5. The secretary of the territory shall, from the abstract of votes certified to him to be cast "for" and "against" "convention" by the said judges of elections, make a full report of the same to the next legislature thereof.

SEC. 6. If a majority of persons shall vote in favor of "convention" at said election held therefor, then it shall be the duty of the legislature held next after the said election to provide for and make all necessary provisions for an election of members to said convention, defining their duties, &c.

This act to take effect and be in force from and after its passage.
JULY, 1855.

AN ACT to provide for the taking a census and the election of delegates to a convention.

Be it enacted by the governor and legislative assembly of the Territory of Kansas, as follows:

SECTION 1. That for the purpose of making an enumeration of the inhabitants entitled to vote under the provisions of this act, an apportionment, and an election of members of a convention, it shall be the duty of the sheriffs of the several counties in Kansas Territory, and they are hereby required, between the first day of March and the first day of April, eighteen hundred and fifty-seven, to make an enumeration of all the free male inhabitants, citizens of the United States, over twenty-one years of age, and all other white persons actually residing within their respective counties; and for this purpose shall have power to appoint one or more deputies to assist in such duties, not to exceed one in each municipal township, each of whom, before entering upon his office, shall take and subscribe an oath or affirmation to support the Constitution of the United States, and faithfully and impartially discharge the duties imposed on him by this act, according to the best of his skill and judgment, which oath or affirmation shall be administered to them severally, and be duly certified by a judge or clerk of the district court of the United States, or judge or clerk of the probate court for the several counties, or by a justice of the peace, and filed and recorded in the office of the secretary of the Territory.

SEC. 2. In case of any vacancy in the office of sheriff, the duties imposed on such sheriff by this act shall devolve upon, and be performed by, the judge of the probate court of the county in which such vacancy may exist, who may appoint deputies, not to exceed one in each municipal township; and in case the office of both sheriff and probate judge in any county shall be or become vacant, the governor shall appoint some competent resident of such county to perform such duty, who shall have the same right to appoint deputies, take and subscribe the same oath, and perform all the requirements of this act, as applied to sheriffs.

SEC. 3. It shall be the duty of the sheriff, probate judge, or person appointed by the governor as herein provided, in each county or election district, on or before the tenth day of April next, to file in the office of the probate judge for such county or election district a full and complete list of all the qualified voters resident in his said county or election district, on the first day of April, eighteen hundred and

fifty-seven, which list shall exhibit in a fair and legible hand the names of all such legal voters.

SEC. 4. It shall be, and is hereby, made the duty of each probate judge, upon such returns being made, without delay, to cause to be posted at three of the most public places in each election precinct in his county or district, one copy of such list of qualified voters, to the end that every inhabitant may inspect the same, and apply to said probate judge to correct any error he may find therein, in the manner hereafter prescribed.

SEC. 5. Said probate judge shall remain in session each day, Sundays excepted, from the time of receiving said returns until the first day of May next, at such places as shall be most convenient to the inhabitants of the county or election district, and proceed to inspection of said returns, and hear, correct, and finally determine according to the facts, without unreasonable delay, all questions concerning the omission of any person from said returns, or the improper insertion of any name on said returns, and any other questions affecting the integrity or fidelity of said returns; and for this purpose, shall have power to administer oaths and examine witnesses, and compel their attendance in such manner as said judge shall deem necessary.

SEC. 6. That as soon as the said list of legal voters shall thus have been revised and corrected, it shall be the duty of the several probate judges to make out full and fair copies thereof, and without delay furnish to the governor of the Territory one copy, and to the secretary of the Territory one copy; and it shall be the duty of the governor to cause copies thereof, distinguishing the returns from each county or election district, to be printed and distributed generally among the inhabitants of the Territory, and one copy shall be deposited with the clerk of each court of record, or probate judge, within the limits of said Territory, and one copy delivered to each judge of the election, and at least three copies shall be posted up at each place of voting.

SEC. 7. It shall be the duty of the governor and secretary of the Territory, so soon as the census shall be completed and returns made, to proceed to make an apportionment of the members for the convention among the different counties and election districts in said Territory, in the following manner: the whole number of legal voters shall be divided by sixty, and the product of such division, rejecting any fraction of a unit, shall be the ratio or rule of apportionment of members among the several counties or election districts; and if any county or election district shall not have a number of legal voters then ascertained equal to the ratio, it shall be attached to some adjoining county or district, and thus form a representative district; the number of said voters in each county or district shall then be divided by the ratio, and the product shall be the number of representatives apportioned to such county or district: *Provided*, that the loss in the number of members, caused by the fraction remaining in the several counties in the division of the legal voters thereof, shall be compensated by assigning so many counties or districts as have the largest fraction an additional member for its fraction as may be necessary to make the whole number of representatives sixty.

SEC. 8. An election shall be held for members of a convention to form a constitution for the State of Kansas, according to the apportionment to be made as aforesaid, on the third Monday in June next, to be held at the various election precincts established in the Territory, in accordance with the provisions of the law on that subject; and at such election no person shall be permitted to vote unless his name shall appear upon said corrected list.

SEC. 9. The board of county commissioners shall appoint the places of voting for their respective counties or election districts; they shall appoint three suitable persons to be judges of the election at each place of voting; they shall cause a notice of the places of holding elections in their respective counties or districts to be published and distributed in every election district or precinct ten days before the day of election. If any judge of election so appointed shall fail or refuse to perform the duties of his said office, the legal voters assembled at the place, and on the day appointed for said election, shall have the power to fill such vacancy by election among themselves.

SEC. 10. The judges of election shall each, before entering on the discharge of his duties, make oath or affirmation that he will faithfully and impartially discharge the duties of judge of the election according to law, which oath shall be administered by any officer authorized to administer oaths; the clerks of election shall be appointed by the judges, and they shall take the like oath or affirmation, to be administered by one of the judges, or by any of the officers aforesaid. Duplicate returns of election shall be made and certified by the judges and clerks, one of which shall be deposited with the board of county commissioners for the county or district in which the election is held, and the other shall be transmitted to the secretary of the Territory; and the one having the highest number of votes in his county or election district shall be the representative for such county or district; and in case of a tie, or a contest in which it cannot be satisfactorily determined who was duly elected, the convention, when assembled, shall order a new election as herein provided.

SEC. 11. Every *bona fide* inhabitant of the Territory of Kansas on the third Monday of June, one thousand eight hundred and fifty-seven, being a citizen of the United States, over the age of twenty-one years, and who shall have resided three months next before said election in the county in which he offers to vote, and no other person whatever, shall be entitled to vote at said election; and any person qualified as a voter may be a delegate to said convention, and no other.

SEC. 12. All persons hereby authorized to take the census, or to assist in the taking thereof, shall have power to administer oaths and examine persons on oath, in all cases where it may be necessary to the full and faithful performance of their duties under this act.

SEC. 13. If any person by menaces, threats, or force, or by any other unlawful means, shall, directly or indirectly, attempt to influence any qualified voter in giving his vote, or deter him from going to the polls, or disturb or hinder him in the free exercise of his right of suffrage at said election, the person so offending shall be adjudged guilty of a misdemeanor, and punished by a fine not less than five

hundred dollars, or by imprisonment not less than three months nor more than six, or by both.

SEC. 14. That every person, not being a qualified voter according to the provisions of this act, who shall vote at any election within said Territory knowing that he is not entitled to vote, and every person who at the same election shall vote more than once, whether at the same or a different place, shall be adjudged guilty of a misdemeanor, and punished by a fine of not less than one hundred dollars nor exceeding two hundred, or by imprisonment not less than three months nor exceeding six, or both.

SEC. 15. Any person whatsoever who may be charged with holding the election herein authorized, who shall wilfully and knowingly commit any fraud or irregularity whatever, with the intent to hinder, or prevent, or defeat a fair expression of the popular vote in the said election, shall be guilty of a misdemeanor, and punished by fine not less than five hundred dollars nor more than one thousand dollars, and imprisonment not less than six months nor more than twelve months, or both.

SEC. 16. The delegates thus elected shall assemble in convention at the capital of said Territory on the first Monday of September next, and shall proceed to form its constitution and State government, which shall be republican in its form, for admission into the Union, on an equal footing with the original States in all respects whatever, by the name of the State of Kansas.

SEC. 17. Said convention, when assembled, shall elect a presiding officer, and also other officers necessary for the transaction of their business; and the members and officers of said convention shall be entitled to receive the same compensation as the members and officers of the legislative assembly of Kansas Territory, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 18. All sheriffs and other officers, for the discharge of the duties required of them by this act, shall be entitled to receive four dollars for each day they are necessarily employed.

SEC. 19. Doniphan county shall constitute the first election district; Brown and Nemaha, the second; Atchison, the third; Leavenworth, the fourth; Jefferson, the fifth; Calhoun, the sixth; Marshall, the seventh; Riley, the eighth; Johnson, the ninth; Douglas, the tenth; Shawnee, Richardson, and Davis, the eleventh; Lykins, the twelfth; Franklin, the thirteenth; Weller, Breckenridge, Wise, and Madison, the fourteenth; Butler and Coffey, the fifteenth; Linn, the sixteenth; Anderson, the seventeenth; Bourbon, McGee, Donn, and Allen, the eighteenth; Woodson, Wilson, Godfrey, Greenwood, and Hunter, the nineteenth.

SEC. 20. All votes given at the election herein provided for shall be *viva voce*.

SECTION 21. Returns of said enumeration shall be according to the following tabular form :

No.	Names of voters.	Heads of families and others.	Males.	Females.	Total.

This bill having been returned by the governor with his objections thereto, and, after reconsideration, having passed both houses by the constitutional majority, it has become a law this the 19th day of February, A. D. 1857.

AN ACT submitting the constitution framed at Lecompton under the act of the legislative assembly of Kansas Territory, entitled "An act to provide for taking the census and election of delegates to a convention," passed February 19, A. D. 1857 :

Be it enacted by the governor and legislative assembly of the Territory of Kansas, as follows:

SECTION 1. That an election shall be held on the first Monday in January, A. D. 1858, between the hours of nine o'clock a. m. and six o'clock p. m., at which all the *bona fide* male inhabitants of the Territory of Kansas, over twenty-one years of age, who are citizens of the United States, or who have declared, on oath, their intention to become such, and who shall have resided in said Territory thirty days next preceding said election, and ten days in the county where said persons offer to vote, may vote for the ratification or rejection of the constitution adopted by the late constitutional convention at Lecompton, organized under the act of the 19th of February, A. D. 1857, entitled "An act to provide for the taking of a census and election of delegates to a convention." The voting shall be by ballot, as follows : Those voting for said constitution with the article entitled "slavery," shall cast a ballot with the words "for the constitution framed at Lecompton, with slavery;" and those voting for the constitution, and against the article entitled "slavery" shall cast a ballot with the words "for the constitution framed at Lecompton, without slavery;" and those voting against the constitution, shall cast a ballot with the words "against the constitution framed at Lecompton."

SEC. 2 It shall be the duty of the governor of Kansas Territory to appoint three commissioners in each county, whose duty it shall be to

establish voting precincts in their respective counties, and appoint three judges of election in each precinct. If, at the hour of opening the polls, the duly appointed judges are not present, or if they shall fail or refuse to act, then the voters assembled shall have power to elect judges to fill the vacancies thus occasioned.

SEC. 3. The commissioners provided for in this act shall, by proclamation, at least five days before the day of the election herein provided for, indicate the place at which, in their respective counties, said election shall be held, and the judges who are to hold the election in the several precincts.

SEC. 4. Before opening the polls for receiving votes, the judges of election shall be duly sworn to a faithful performance of their duties, and provide suitable ballot-boxes for the reception of the ballots. They shall appoint two clerks, who shall also be sworn to keep a faithful record of the names of all persons depositing their votes with said judges. At the closing of the polls the judges shall count and preserve the ballots, and certify at the bottom of the list of voters the number of votes cast in each of the forms prescribed in the second section of this act, which certificate shall be attested by the clerks. One of the lists of voters thus certified shall be deposited with one of the commissioners provided for in this act, and the other shall be immediately transmitted to the governor, or, in his absence from any cause, to the president of the council and the speaker of the house of representatives of the legislative assembly.

SEC. 5. It shall be the duty of the governor of the Territory, the president of the council, and speaker of the house of representatives, or either two of them, immediately upon receiving the returns, to examine them and certify to the result of the vote upon the constitution in the manner hereinbefore provided, and cause the same to be made known by proclamation, and communicated to the President and Congress of the United States.

SEC. 6. Any officer of an election herein provided for, or any other general or special election which may hereafter be held in this Territory upon any question or for any officer, or any person or persons, who shall knowingly inscribe or permit to be inscribed on the poll-books, or list of voters, the name of any voter not actually present and voting, or the name of any person not entitled to vote, or shall knowingly certify to a false list of voters, or shall knowingly certify to any false returns, knowing the same to be false, shall be deemed guilty of felony, and, upon conviction, shall be punished by imprisonment in the penitentiary for not less than one nor more than five years.

SEC. 7. In all offences arising under any of the provisions of this act, the probate judges of the several counties shall have original and exclusive jurisdiction, and shall have the same power in summoning juries, and in all other matters appertaining to the arrest, trial, conviction and punishment of such offenders as are now by law vested in the district courts in cases of felony: *Provided*, That if any probate judge shall refuse to issue writs or in any manner to proceed under this act, the prosecution may be had before the probate court of any adjoining county.

Sec. 8. All acts and parts of acts conflicting with the provisions of this act, shall be, and the same are hereby, repealed.

Sec. 9. The passage of this act shall be taken and deemed sufficient notice for the holding of said election.

Sec. 10. Any person not legally authorized by the foregoing provisions of this act, who shall cast his vote at the election herein provided for, shall be deemed guilty of felony, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars, or shall suffer imprisonment not more than one year, or both, at the discretion of the court.

Sec. 11. All officers provided by the provisions of this act shall receive such compensation as may hereafter be provided by law.

Sec. 12. This act to take effect and be in force from and after its passage.

Approved December 17, 1857.

PROCLAMATION OF THE ACTING GOVERNOR OF KANSAS.

UNITED STATES OF AMERICA,
Territory of Kansas.

To the legal voters and elective officers of Kansas:

Whereas the following returns of the census taken under the act of the legislative assembly entitled "An act to provide for the taking of a census and election of delegates to a convention," passed the 19th February, 1857, have been made to me, to wit:

Districts.	Counties.	No. of legal voters.	Whole population.
1.	Doniphan.....	1,086	4,120
2.	Brown.....	206	no returns
2.	Nemaha	140	512
3.	Atchison.....	804	2,807
4.	Leavenworth	1,837	5,529
5.	Jefferson.....	555	no returns
6.	Calhoun.....	291	885
7.	Marshall.....	206	415
8.	Riley	353	no returns
8.	Pottawatomie.....	205	641
9.	Johnson.....	496	890
10.	Douglas.....	1,318	3,727
11.	Shawnee	283	
11.	Richardson		
11.	Davis		
12.	Lykins....	413	1,352
13.	.....	no returns.	
14.	.....	no returns.	

Districts.	Counties.	No. of legal voters.	Whole population.
15.	.....	no returns.	
16.	Linn	413	1,821
17.	.....	no returns.	
18.	Bourbon, McGee, Dorn, and Al- len.....	645	2,622
Total.....		9,251	

Now, therefore, I, Frederick P. Stanton, secretary and acting governor, do hereby proclaim that, according to the provisions of the said act and the census returns made in pursuance thereof, and upon a proper apportionment among the legal voters of the several districts aforesaid, they are respectively entitled to elect to the convention provided for in said law the number of delegates herein assigned to them, that is to say: To the—

Districts.	Counties.	Delegates.
1.	Doniphan	7
2.	Brown and Nemaha.....	2
3.	Atchison.....	5
4.	Leavenworth.....	12
5.	Jefferson.....	4
6.	Calhoun.....	2
7.	Marshall.....	1
8.	Riley and Pottawatomie.....	4
9.	Johnson.....	3
10.	Douglas.....	8
11.	Shawnee, Richardson, and Davis.....	2
12.	Lykins.....	3
16.	Linn.....	3
18.	Bourbon, McGee, Dorn, and Allen.....	4

The proper officers will hold the election for delegates to said convention on the third Mouday in June next, as directed by the law aforesaid, and in accordance with the apportionment herein made and declared.

In testimony whereof, I have hereunto subscribed my name and
[L. S.] affixed the seal of the Territory, at Lecompton, this the 20th
of May, 1857.

FRED. P. STANTON.

Announcement of the vote of the 4th of January.

"In accordance with the provisions of an act entitled 'An act submitting the constitution framed at Lecompton under the act of the legislative assembly of Kansas Territory, entitled An act to provide for taking a census and election of delegates to a convention,' passed February 19, A. D. 1857, the undersigned announce the following as the official vote of the people of Kansas Territory on the questions as therein submitted on the 4th day of January, 1858:

Counties.	Against the Lecompton constitution.	For the Lecompton constitution, with slavery.	For the Lecompton constitution, without slavery.
Leavenworth	1,997	10	3
Atchison	536	4	.....
Doniphan	561	1	2
Brown	187	2	.....
Nemaha	234	1	.....
Marshall	66	.....	.....
Riley	287	7	.....
Pottawatomie	207	2	.....
Calhoun	249	.....	.....
Jefferson	377	1	.....
Johnson	392	2	.....
Lykins	358	1	1
Linn	510	1	3
Bourbon	268	55	.....
Douglas	1,647	21	2
Franklin	304	.....	.....
Anderson	177	.....	.....
Allen	191	1	4
Shawnee	832	28	3
Coffe	463	.....	4
Woodson	50	.....	.....
Richardson	177	.....	1
Breckenridge	191	.....	.....
Madison	40	.....	.....
Davis	21	.....	.....
Total	10,226	138	24

"Some precincts have not yet sent in their returns, but the above is the complete vote received to this date.

"J. W. DENVER,

"Secretary and Acting Governor.

"C. W. BABCOCK,

"President of the Council.

"G. W. DEITZLER,

"Speaker of the House of Representatives.

"JANUARY 26, 1858."

Extract from the executive minutes of Kansas Territory.

JULY 17, 1857.

The following letter was addressed to William G. Mathias and Thomas Johnson on the 18th June last:

SIR: I enclose you a copy of an act passed by the last legislative assembly of the Territory providing for a new apportionment of representatives and councilmen, according to the returns of the late census.

I arrived at my post here only on the 27th ultimo, and I had never seen a copy of this law, nor, as I am informed, had it ever been published in any newspaper.

Since the 1st June, the term limited for my action in the premises, the proof-sheets of the printed law has been received at this office from St. Louis, and my attention has been called to the subject too late to act under the law.

You will see that the president of the council and the speaker of the house of representatives of the last legislative assembly are required to perform this duty in the event of its not having been performed by the governor.

Either you or your associate are authorized to make the apportionment, but as I have addressed this letter to both of you, I would suggest your mutual co-operation, in order to prevent conflict in your proceedings.

I enclose herein also a printed copy of the acting governor's proclamation, in which you will find stated all the returns received from the several counties under the late census law. Considering the importance of this matter, I beg leave to express the hope that you will give it your immediate attention.

R. J. WALKER,
Governor of Kansas Territory.

JULY 18.

Received this day the following apportionment for the territorial legislative assembly:

Apportionment for the second (2d) territorial legislature for the Territory of Kansas.

FOR THE COUNCIL.

	No. of members.
1st council district, Leavenworth county.....	3
2d council district, Atchison county.....	1
3d council district, Doniphan county.....	
4th council district, Brown, Nemaha, Marshall, Pottawatomie, and Riley counties, and all that part of the Territory of Kansas which lies west of Marshall, Riley, and Davis counties.....	2
5th. Jefferson and Calhoun counties.....	1
6th. Douglas and Johnson counties.....	3
7th. Shawnee, Richardson, Davis, Wise, Breckenridge, and	
8th district, Bourbon, Godfrey, Wilson, Dorn and McGee counties, and	

9th district, Butler, Hunter, Greenwood, Madison, Weller, Coffey, Woodson, and Allen counties	2
10th. Anderson, Lykins, Linn, and Franklin, and all that part of the Territory of Kansas which lies west of Wise, Butler, and Hunter counties.....	1
Whole number.....	<u>13</u>

WM. G. MATHIAS,
Speaker of the House of Representatives, at session 1857.
 THOMAS JOHNSON,
President of the Council.

FOR THE HOUSE OF REPRESENTATIVES.

	No of members.
1st district, Leavenworth county	8
2d district, Atchison county.....	3
3d district, Doniphan county.....	5
4th district, Brown, and	
5th district, Nemaha counties.....	1
6th district, Marshall county.....	1
7th district, Jefferson county.....	2
8th district, Calhoun county.....	1
9th district, Pottawatomie and Riley counties.....	2
10th district, Douglas and Johnson counties, and all that part of the Territory of Kansas lying west of the counties of Wise, Butler, and Hunter.....	8
11th district, Shawnee county.....	1
12th. Richardson, Davis, Wise and Breckenridge, and	
13th, Weller, Madison, Butler, Hunter and Greenwood, and	
14th, Bourbon, Godfrey, Wilson, Dorn and McGee, and	
15th, Woodson, Coffey and Allen, and	
16th, Anderson and Franklin counties.....	3
17th. Linn.....	2
18th. Lykins.....	2
Whole number.....	<u>39</u>

WM. G. MATHIAS,
Speaker House of Representatives, at session 1857.
 THOMAS JOHNSON,
President of the Council.

[Received on Saturday night, 30th ultime, from Colonel Clarkson.—J. B.]

LECOMPTON, K. T., *January 14, 1858.*

SIR: The bearer of this, Colonel J. J. Clarkson, will deliver to you an authentic copy of the constitution recently framed by the convention which assembled at Lecompton on the 5th day of September, 1857. By the terms of that constitution, and the action of the people under it, it is made my duty to have the same submitted to the action of the Congress of the United States, with the view of the admission of Kansas into the Union as an independent State. It is hoped, therefore, that it will be presented by you to the consideration of Congress, with such suggestions as you may think advisable to submit.

The question whether this constitution should contain a clause making Kansas a slave State or not was submitted to a vote of the people of the Territory on the 21st day of December, 1857, and resulted as follows:

For the constitution with slavery.....	6,226
For the constitution with no slavery.....	569
	<hr/>
Total vote for the constitution.....	6,795
	<hr/>

The votes for the two sides of the constitution is a majority over any vote previously given at any election holden in the Territory.

The constitution is, therefore, by its own requirements, presented to the consideration of Congress, and Kansas asks for admission into the Union as a sovereign State

I am, very respectfully, your obedient servant,

J. CALHOUN,

President of the Constitutional Convention.

His Excellency JAMES BUCHANAN,

President of the United States.

CONSTITUTION OF THE STATE OF KANSAS.

PREAMBLE.

We, the people of the Territory of Kansas, by our representatives in convention assembled at Lecompton, in said Territory, on Monday the fourth day of September, one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-second year, having the right of admission into the Union as one of the United States of America, consistent with the federal Constitution and by virtue of the treaty of cession by France to the United States of the province of Louisiana, made and entered into on the thirtieth day of April, one thousand eight hundred and three, and by virtue of, and in accordance with, the act of Congress passed March the thirtieth, one thousand eight hundred and fifty-four, entitled "An act to organize the Territories of Nebraska and Kansas," in order to secure to ourselves and our posterity the enjoyment of all the rights of life, liberty, and property, and the free pursuit of happiness, do mutually agree with each other to form ourselves into a free, independent, and sovereign State by the name and style of the State of Kansas, and do ordain and establish the following constitution for the government thereof:

ARTICLE I.—*Boundaries.*

We do declare and establish, ratify and confirm the following as the permanent boundaries of the said State of Kansas, that is to say: Beginning at a point on the western boundary of the State of Missouri where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah, on the summit of the Rocky mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State, to the place of beginning.

ARTICLE II.—*County Boundaries.*

No county now established which borders upon the Missouri river, or upon either bank of the Kansas river, shall ever be reduced by the formation of new counties to less than twenty miles square; nor shall any other county now organized, or hereafter to be organized, be reduced to less than five hundred square miles.

ARTICLE III.—*Distribution of Powers.*

The power of the government of the State of Kansas shall be divided into three separate departments—the executive, the legislative, and the judicial; and no person charged with the exercise of powers prop-

erly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE IV.—*Executive Department.*

SECTION 1. The chief executive power of this State shall be vested in a governor, who shall hold his office for two years from the time of his installation.

SEC. 2. The governor shall be elected by the qualified electors of the State. The returns of every election for governor shall be sealed up and transmitted to the seat of government, directed to the secretary of state, who shall deliver them to the speaker of the house of representatives at the next ensuing session of the legislature, during the first week of which session the speaker shall open and publish them in the presence of both houses of the legislature. The person having the highest number of votes shall be governor; but if two or more shall be equal, and having received the highest number of votes, then one of them shall be chosen governor by the joint ballot of both houses of the legislature; contested elections for governor shall be determined by both houses of the legislature in such manner as may be prescribed by law.

SEC. 3. The governor shall be at least thirty years of age, shall have been a citizen of the United States for twenty years, shall have resided in this State at least five years next preceding the day of his election, or from the time of the formation of this constitution, and shall not be capable of holding the office more than four years in any term of six years.

SEC. 4. He shall, at stated terms, receive for his services a compensation which shall be fixed by law, and shall not be increased or diminished during the term for which he shall be elected.

SEC. 5. He shall be commander-in-chief of the army and navy of this State, and of the militia, except when they shall be called into the service of the United States.

SEC. 6. He may require information, in writing, from officers in the executive department on any subject relating to the duties of their respective offices.

SEC. 7. He may, in cases of emergency, convene the legislature at the seat of government, or at a different place, if that shall have become, since their last adjournment, dangerous from an enemy or disease; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he may think proper, not beyond the next stated meeting of the legislature.

SEC. 8. He shall, from time to time, give the legislature information of the state of the government, and recommend to their consideration such measures as he may deem necessary and expedient.

SEC. 9. He shall take care that the laws be faithfully executed.

SEC. 10. In all criminal and penal cases, except in those of treason and impeachment, he shall have power to grant reprieves and pardons, and remit fines; and in cases of forfeitures, to stay the collection until the end of the next session of the legislature, and to remit for-

feitures by and with the advice and consent of the senate. In cases of treason he shall have power to grant reprieves by and with the advice and consent of the senate, but may respite the sentence until the end of the next session of the legislature.

SEC. 11. All commissions shall be in the name and by the authority of the State of Kansas, be sealed with the great seal, and signed by the governor, and attested by the secretary of state.

SEC. 12. There shall be a seal of this State, which shall be kept by the governor and used by him officially, and the present seal of this Territory shall be the seal of the State until otherwise directed by the legislature.

SEC. 13. All vacancies not provided for in this constitution shall be filled in such manner as the legislature may prescribe.

SEC. 14. The secretary of state shall be elected by the qualified electors of the State, and shall continue in office during the term of two years, and until his successor is qualified. He shall keep a fair register of all the official acts and proceedings of the governor, and shall, when required, lay the same and all papers, minutes, and vouchers relative thereto, before the legislature, and shall perform such other duties as may be required by law.

SEC. 15. Every bill which shall have passed both houses of the legislature shall be presented to the governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it shall have originated, which shall enter the objections at length upon their journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of the house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered; if approved by two-thirds of that house, it shall become a law; but in such case, the votes of each house shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journals of each house, respectively. If any bill shall not be returned by the governor within six days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the legislature, by their adjournment, prevent its return, in which case it shall not become a law.

SEC. 16. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except resolutions for the purpose of obtaining the joint action of both houses, and on questions of adjournment, shall be presented to the governor, and, before it shall take effect, be approved by him; or, being disapproved, shall be repassed by both houses, according to the rules and limitations prescribed in case of a bill.

SEC. 17. A lieutenant governor shall be elected at the same time and for the same term as the governor, and his qualifications and the manner of his election shall be the same in all respects.

SEC. 18. In case of the removal of the governor from office, or of his death, failure to qualify, resignation, removal from the State, or inability to discharge the powers and duties of the office, the said office, with its compensation, shall devolve upon the lieutenant gov-

ernor, and the legislature shall provide by law for the discharge of the executive functions in other necessary cases.

SEC. 19. The lieutenant governor shall be president of the senate, but shall have no vote except in the case of a tie, when he may give the casting vote; and while acting as such shall receive a compensation equal to that allowed to the speaker of the house of representatives.

SEC. 20. A sheriff, and one or more coroners, a treasurer and surveyor, shall be elected in each county by the qualified electors thereof, who shall hold their offices for two years, unless sooner removed, except that the coroner shall hold his office until his successor be duly qualified.

SEC. 21. A State treasurer and auditor of public accounts shall be elected by the qualified electors of the State, who shall hold their offices for the term of two years, unless sooner removed.

ARTICLE V.—*Legislative Department.*

SECTION 1. The legislative authority of this State shall be vested in a legislature, which shall consist of a senate and house of representatives.

SEC. 2. No person holding office under the authority of the United States, except postmasters, or any lucrative office under the authority of this State, shall be eligible to, or have a seat in, the legislature; but this provision shall not extend to township officers, justices of the peace, notaries public, or military officers.

SEC. 3. No person who has been, or may hereafter be, convicted of a penitentiary offence, or of an embezzlement of the public funds, shall hold any office in this State; nor shall any person holding public money for disbursement or otherwise have a seat in the legislature until he shall have accounted for and paid such money into the treasury.

SEC. 4. The members of the house of representatives shall be elected by the qualified electors, and shall serve for the term of two years from the close of the general election, and no longer.

SEC. 5. The senators shall be chosen for the term of four years at the same time, in the same manner, and at the same places as are herein provided for members of the house of representatives.

SEC. 6. At the first session of the legislature the senate shall, by lot, divide their senators into two classes; and the seats of the senators of the first class shall be vacated at the expiration of the second year, and of the second class at the expiration of the fourth year, so that one-half, as near as may be, may be chosen thereafter every two years for the term of four years.

SEC. 7. The number of senators shall not be less than thirteen nor more than thirty-three; and at any time when the number of senators is increased, they shall be annexed by lot to one of the two classes, so as to keep them as nearly equal in number as possible.

SEC. 8. The number of members of the house of representatives shall not be less than thirty-nine, nor more than one hundred.

SEC. 9. The style of the laws of this State shall be, "Be it enacted by the legislature of the State of Kansas."

SEC. 10. Each house may determine the rules of its own proceedings, punish its members for disorderly behavior, and with the consent of two-thirds may expel a member, but not a second time for the same offence. The names of the members voting on the question shall be spread upon the journal.

SEC. 11. Each house during the session may, in its discretion, punish by fine or imprisonment, or both, any person not a member, for disrespectful or disorderly behavior in its presence, or for obstructing any of its proceeding: provided such fine shall not exceed two hundred dollars, or such imprisonment shall not extend beyond the end of the session.

SEC. 12. Each house of the legislature shall keep a journal of its proceedings, and cause the same to be published as soon after the adjournment as may be provided by law.

SEC. 13. Neither house during the session of the legislature shall, without the consent of the other, adjourn for more than three days, (Sundays excepted,) nor to any other place than that in which they may be sitting.

SEC. 14. The senate when assembled shall choose its officers, and the house of representatives shall choose a speaker and its other officers, and each branch of the legislature shall be the judge of the qualifications, elections, and returns of its members.

SEC. 15. A majority of each house of the legislature shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner as each house may prescribe.

SEC. 16. Each member of the legislature shall receive from the public treasury such compensation for his services as may be fixed by law; but no increase of compensation shall take effect during the term for which the members are elected when such law passed.

SEC. 17. Bills may originate in either house, but may be altered, amended, or rejected by the other, and all bills shall be read by sections on three several days, except on an extraordinary occasion; two-thirds of the members may dispense with such reading, but in no case shall a bill be passed without having once been read; and every bill having passed both houses shall be signed by the speaker and president in the presence of their respective houses.

SEC. 18. The legislature shall provide by law for filling all vacancies that may occur in either house by the death, resignation, or otherwise, of any of its members.

SEC. 19. The doors of each house shall be open, except on such occasions as, in the opinion of the house, the public safety may require secrecy.

SEC. 20. Every law enacted by the legislature shall embrace but one subject, and that shall be expressed in its title, and any extraneous matter introduced in a bill which shall pass shall be void; and no law shall be amended by its title, but in such case the act or section amended shall be enacted and published at length.

SEC. 21. Every act and joint resolution shall be plainly worded, avoiding, as far as practicable, the use of technical terms.

SEC. 22. The legislature shall meet every two years at the seat of government.

SEC. 23. The legislature shall provide for an enumeration of inhabitants by law. An apportionment of representatives in the legislature shall be provided by law according to population, as nearly equal as may be.

SEC. 24. The legislature shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants or other persons laboring under legal disabilities, by special legislation, but by general laws shall confer such powers on the courts of justice.

SEC. 25. It shall be the duty of all civil officers of this State to use due diligence in the securing and rendition of persons held to service or labor in this State, either of the States or Territories of the United States; and the legislature shall enact such laws as may be necessary for the honest and faithful carrying out of this provision of the constitution.

ELECTION DISTRICTS.

At the first election holden under this constitution for members of the State legislature, the representative and senatorial districts shall be as follows: The first representative district shall consist of Doniphan county, and be entitled to four representatives; the second, Atchison, four representatives; the third, Leavenworth, eight representatives; the fourth, Brown and Nemaha, one representative; the fifth, Calhoun and Pottawatomie, one representative; the sixth, Jefferson, two representatives; the seventh, Marshall and Washington, one representative; the eighth, Riley, one representative; the ninth, Johnson, four representatives; the tenth, Lykins, one representative; the eleventh, Linn, two representatives; the twelfth, Bourbon, two representatives; the thirteenth, McGee, Dorn, and Allen, one representative; the fourteenth, Douglas, five representatives; the fifteenth, Anderson and Franklin, one representative; the sixteenth, Shawnee, two representatives; the seventeenth, Weller and Coffey, one representative; the eighteenth, Woodson, Wilson, Godfrey, Greenwood, and Madison, one representative; the nineteenth, Breckenridge and Richardson, one representative; the twentieth, Davis, Wise, Butler, Hunter, and that portion of country west, one representative; in all, forty-four representatives. The first senatorial district shall be Doniphan county, and be entitled to one senator; the second, Atchison, one senator; the third, Doniphan and Atchison, one senator; the fourth, Leavenworth, three senators; the fifth, Brown, Nemaha, and Pottawatomie, one senator; the sixth, Riley, Marshall, Dickinson, and Washington, one senator; the seventh, Jefferson and Calhoun, one senator; eighth, Johnson, two senators; the ninth, Lykins, Anderson, and Franklin, one senator; the tenth, Linn, one senator; the eleventh, Bourbon and McGee, one senator; the twelfth, Douglas, two senators; the thirteenth, Shawnee, one senator; the fourteenth, Dorn, Allen, Wilson, Woodson, Godfrey, Greenwood, Madison, and Coffey, one senator; the fifteenth, Richardson, Davis, Wise, Brecken-

ridge, Butler, Hunter, and all west of Davis, Wisc, Butler, and Hunter, one senator. The entire number of senators, nineteen.

ARTICLE VI.—*Judiciary.*

SECTION 1. The judicial powers of this State shall be vested in one supreme court, circuit courts, chancery courts, courts of probate, and justices of the peace, and such other inferior courts as the legislature may, from time to time, ordain and establish.

SEC. 2. The supreme court, except in cases otherwise directed in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law: *Provided*, That the supreme court shall have power to issue writs of injunction, mandamus, quo warranto, habeas corpus, and such other remedial and original writs as may be necessary to give a general superintendence and control of inferior jurisdictions.

SEC. 3. There shall be held annually, at the seat of government, two sessions of the supreme court, at such times as the legislature may direct.

SEC. 4. The supreme court shall consist of one chief justice and two associate justices.

SEC. 5. The supreme court may elect a clerk and reporter, who shall respectively receive such compensation as the legislature may prescribe.

SEC. 6. The State shall be divided into convenient circuits, and for each circuit there shall be elected a judge, who shall, at the time of his election, and as long as he continues in office, reside in the circuit for which he has been elected.

SEC. 7. The circuit courts shall have original jurisdiction of all matters, civil and criminal, within this State not otherwise excepted in this constitution; but in civil cases only where the matter in controversy shall exceed the sum of one hundred dollars.

SEC. 8. A circuit court shall be held in each county in this State twice in every year, at such times and places as may be prescribed by law; and the judges of the several circuit courts may hold courts for each other when they may deem it advisable, and shall do so when directed by law.

SEC. 9. The legislature may establish a court or courts of chancery with original and appellate equity jurisdiction, and until the establishment of such court or courts the said jurisdiction shall be vested in the judges of the circuit courts respectively; but the judges of the several circuit courts shall have power to issue writs of injunction returnable to the court of chancery.

SEC. 10. The legislature shall establish within each county in the State a court of probate for the granting of letters testamentary of the administration, and orphan's business, and the general superintendence of the estates of deceased persons, and such other duties as may be prescribed by law; but in no case shall they have jurisdiction in matters of civil or criminal law.

SEC. 11. A competent number of justices of the peace in and for each county shall be elected in such mode and for such term of office as the

legislature may direct. Their jurisdiction in civil matters shall be limited to cases in which the amount does not exceed one hundred dollars; and in all cases tried by justices of the peace the right of appeal shall be secured under such rules and regulations as may be prescribed by law.

SEC. 12. The chief justice and associate justices of the supreme court, and judges of the circuit court, and courts of chancery, shall, at stated times, receive for their services a compensation which shall be fixed by law, and shall not be diminished during their continuance in office; but they shall receive no fees, no perquisites of office, nor hold any other office of profit or trust under this State, the United States, or either of the other States, or any other power during their continuance in office.

SEC. 13. The chief justice and associate justices of the supreme court shall be elected by the qualified voters of the whole State, the judges of the circuit courts by the qualified voters of their respective circuits, and the judges of the chancery courts shall be elected by the qualified voters of their respective chancery divisions, at such times and places as may be prescribed by law; but said election shall not be on the same day that the election of members of the legislature is held.

SEC. 14. All vacancies in the office of chief justice and associate justices of the supreme court, and judges of the circuit court, court of chancery, and probate court, shall be filled by appointment made by the governor for the time being, but the governor shall, immediately upon the receipt of information of a vacancy aforesaid, order an election to fill such vacancy, first giving sixty days' notice of such election.

SEC. 15. The chief justice and associate justices of the supreme court shall hold their offices for and during the period of six years from the date of their election, and until their successors shall be qualified, and provision shall be made by law for classifying those elected, so that the chief justice or one of the said associate justices of the supreme court shall be elected every two years. The judges of the circuit, chancery, and probate courts shall hold their offices for and during the term of four years from the date of their election, and until their successors shall be qualified.

SEC. 16. Clerks of the circuit courts and courts of probate shall be elected by the qualified electors in each county, and all vacancies in such office shall be filled in such manner as the law may direct.

SEC. 17. The chief justice and associate justices of the supreme court, by virtue of their offices, shall be conservators of the peace throughout the State, the judges of the circuit court throughout their respective circuits, and the judges of the inferior courts throughout their respective counties.

SEC. 18. The style of all process shall be "The State of Kansas," and all prosecutions shall be carried on in the name and by the authority of the State of Kansas, and shall conclude against the peace and dignity of the same.

SEC. 19. There shall be an attorney general of the State, who shall be elected by the qualified voters thereof, and as many district attorneys as the legislature may deem necessary, to be elected by the qualified

voters of their respective circuits, who shall hold their offices for the term of four years from the date of their election, and shall receive for their services such compensation as may be established by law, which shall not be diminished during their continuance in office.

SEC. 20. Vacancies occurring in the office of attorney general, district attorneys, clerk of the circuit court, clerk of the court of probate, justices of the peace, and constables, shall be filled in such manner as shall be provided by law.

SEC. 21. The house of representatives shall have the sole power of impeachment.

SEC. 22. All impeachments shall be tried by the senate; when sitting for that purpose the senators shall be on oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 23. The governor and all civil officers shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and of disqualification from office of honor, trust, or profit under the State; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, and punishment, according to law.

ARTICLE VII.—*Slavery.*

SECTION 1. The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave to such slave and its increase is the same and as inviolable as the right of the owner of any property whatever.

SEC. 2. The legislature shall have no power to pass laws for the emancipation of slaves without the consent of the owners, or without paying the owners, previous to their emancipation, a full equivalent in money for the slaves so emancipated. They shall have no power to prevent emigrants to the State from bringing with them such persons as are deemed slaves by the laws of any one of the United States or Territories, so long as any person of the same age or description shall be continued in slavery by the laws of this State: *Provided*, That such person or slave be the *bona fide* property of such emigrants: *And provided, also*, That laws may be passed to prohibit the introduction into this State of slaves who have committed high crimes in other States or Territories. They shall have power to pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a public charge. They shall have power to oblige the owners of slaves to treat them with humanity, to provide for them necessary food and clothing, to abstain from all injuries to them extending to life or limb, and, in case of their neglect or refusal to comply with the direction of such laws, to have such slave or slaves sold for the benefit of the owner or owners.

SEC. 3. In the prosecution of slaves for crimes of higher grade than petit larceny, the legislature shall have no power to deprive them of an impartial trial by a petit jury.

SEC. 4. Any person who shall maliciously dismember, or deprive a

slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave.

ARTICLE VIII.—*Elections and Rights of Suffrage.*

SECTION 1. Every male citizen of the United States above the age of twenty-one years, having resided in this State one year, and in the county, city, or town in which he may offer to vote three months next preceding any election, shall have the qualifications of an elector, and be entitled to vote at all elections. And every male citizen of the United States above the age aforesaid, who may be a resident of the State at the time that this constitution shall be adopted, shall have the right of voting as aforesaid; but no such citizen or inhabitant shall be entitled to vote except in the county in which he shall actually reside at the time of the election.

SEC. 2. All voting by the people shall be by ballot.

SEC. 3. Electors during their attendance at elections, going to and returning therefrom, shall be privileged from arrest in all cases except treason, felony, and breach of the peace.

SEC. 4. No elector shall be obliged to do militia duty on the days of election, except in time of war or public danger.

SEC. 5. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of his own, or of the United States, or of this State.

SEC. 6. No person employed in the military, naval, or marine service of the United States, stationed in this State, shall, by reason of his services therein, be deemed a resident of this State.

SEC. 7. No person shall be elected or appointed to any office in this State, civil or military, who shall not be possessed of the qualifications hereinbefore prescribed for an elector.

SEC. 8. The legislature shall have power to exclude from the privilege of voting, or being eligible to office, any person convicted of bribery, perjury, or other infamous crimes.

SEC. 9. The first general election in this State shall be held on the day and year provided by this constitution, and all general elections thereafter on the day and year provided by subsequent legislative enactment.

ARTICLE IX.—*Finance.*

SECTION 1. The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall from time to time prescribe.

SEC. 2. The legislature shall provide for an annual tax sufficient to defray the estimated expenses of the government for each year; and whenever the expenses of any one year shall exceed the income, the legislature shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency as well as the estimated expenses of such ensuing year.

SEC. 3. For the purpose of defraying extraordinary expenditures,

the State may contract public debts ; but such debts, in the aggregate, shall never exceed five hundred thousand dollars. Every such debt shall be authorized by law for some purpose or purposes, to be distinctly specified therein, and a vote of a majority of all the members elected to both houses shall be necessary to the passage of such law ; and such law shall provide for an annual tax to be levied sufficient to pay the interest of such debt created, and such appropriation shall not be repealed, nor the taxes postponed, until the principal and interest of such debt shall have been wholly paid.

SEC. 4. The legislature may also borrow money for the purpose of repelling invasion, suppressing insurrection, and defending the State in time of war ; but the money thus raised shall be applied exclusively to the purposes for which it was raised.

SEC. 5. No scrip, certificate, or other evidence of State debt shall be issued, except for such debts as are authorized by the third or fourth sections of this article.

SEC. 6. The property of the State and counties, both real and personal, and such other property as the legislature may deem necessary for school, religious, or charitable purposes, may be exempted from taxation.

SEC. 7. No money shall at any time be paid out of the treasury except in pursuance of an appropriation by law.

SEC. 8. An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the legislature.

ARTICLE X.—*Revenue.*

SECTION 1. All bills for raising revenue shall originate in the house of representatives.

SEC. 2. Taxation shall be equal and uniform, and all property on which taxes shall be levied shall be taxed in proportion to its value, to be ascertained as directed by legislative enactment, and no one species of property shall be taxed higher than another species of property of equal value on which taxes shall be levied.

SEC. 3. The legislature shall have power to levy an income tax, and to tax all persons pursuing any occupation, trade, or profession.

SEC. 4. The legislature shall provide for the classification of the lands of this State into three distinct classes, to be styled respectively Class One, Two, Three, and each of these classes shall have a fixed value in so much money, upon which there shall be assessed an *ad valorem* tax.

SEC. 5. The legislature shall provide for a capitation or poll tax, to be paid by every able bodied male citizen over twenty-one years and under sixty years of age ; but nothing herein contained shall prevent the exemption of taxable polls in cases of bodily infirmity.

SEC. 6. The legislature shall levy a tax on all railroad incomes proceeding from gifts of public lands at the rate of ten cents on the one hundred dollars.

SEC. 7. No lotteries shall be authorized by law as a source of revenue.

SEC. 8. Whatever donations of lands or money that may be received from the general government by this State shall be regarded as a source of revenue subject to a compact made with the United States by special ordinance.

ARTICLE XI.—*Public Domain and Internal Improvement.*

SECTION 1. It shall be the duty of the legislature to provide for the prevention of waste and damage of the public land now possessed or that may hereafter be ceded to the Territory or State of Kansas, and it may pass laws for the sale of any part or portion thereof, and in such case provide for the safety, security, and appropriation of the proceeds.

SEC. 2. A liberal system of internal improvements, being essential to the development of the resources of the country, shall be encouraged by the government of this State; and it shall be the duty of the legislature, as soon as practicable, to ascertain by law proper objects of improvement, in relation to roads, canals, and navigable streams, and to provide for a suitable application of such funds as may be appropriated for such improvements.

ARTICLE XII.—*Corporations.*

SECTION 1. Corporations may be formed under a general law, but the legislature may by special act create bodies politic for municipal purposes, where the objects of the corporations cannot be attained under it; all general laws or special acts enacted under the provisions of this section may be altered, amended, or repealed by the legislature at any time.

SEC. 2. No corporation shall take private property for public use without first having the consent of the owner, or where the necessity thereof being first established by a verdict of a jury, and the value thereof assessed and paid.

SEC. 3. It shall be the duty of the legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses.

SEC. 4. The legislature may incorporate banks of deposit and exchange, but such banks shall not issue any bills, notes, checks or other paper as money.

SEC. 5. The legislature may incorporate one bank of discount and issue, with not more than two branches, provided that the act incorporating the said bank and branches thereof shall not take effect until it shall be submitted to the people at the general election next succeeding the passage of the same, and shall have been approved by a majority of the electors voting at such election.

SEC. 6. The said bank and branches shall be mutually liable for each other's debts and liabilities for all paper credits or bills issued representing money; and the stockholders in said bank or branches shall be individually responsible to an amount equal to the stock held by them for all debts or liabilities of said bank or branches, and no

law shall be passed sanctioning directly or indirectly the suspension by said bank or its branches of specie payment.

SEC. 7. The State shall not be a stockholder in any bank, nor shall the credit of the State be given or loaned in aid of any person, association, or incorporation; nor shall the State become a stockholder in any corporation or association.

ARTICLE XIII.—*Militia.*

SECTION 1. The militia of this State shall consist of all the able-bodied male citizens of the State between the ages of eighteen and forty-five years, except such citizens as are now or hereafter may be exempted by the laws of the United States or of this State.

SEC. 2. Any citizen whose religious tenets conflict with bearing arms shall not be compelled to do militia duty in time of peace, but shall pay such an equivalent for personal services as may be prescribed by law.

SEC. 3. All militia officers shall be elected by the persons subject to military duty within the bounds of their several companies, battalions, regiments, brigades and divisions, under such rules and regulations as the legislature may, from time to time, direct and establish.

ARTICLE XIV.—*Education.*

SECTION 1. A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, schools and the means of education shall be forever encouraged in this State.

SEC. 2. The legislature shall take measures to preserve from waste and damage such lands as have been or hereafter may be granted by the United States, or lands or funds which may be received from other sources, for the use of schools within this State, and shall apply the funds which may arise from such lands, or from any other source, in strict conformity with the object of the grant.

SEC. 3. The legislature shall, as soon as practicable, establish one common school (or more) in each township in the State, where the children of the township shall be taught *gratis*.

SEC. 4. The legislature shall have power to make appropriations from the State treasury for the support and maintenance of common schools whenever the funds accruing from the lands donated by the United States, or the funds received from other sources, are insufficient for that purpose.

SEC. 5. The legislature shall have power to pass laws for the government of all common schools within this State.

ARTICLE XV.—*Miscellaneous.*

SECTION 1. Lecompton shall be the seat of government until otherwise directed by law, two-thirds of each house of the legislature concurring in the passage of such law.

SEC. 2. Every person chosen or appointed to any office under this State, before entering upon the discharge of its duties, shall take an

oath or affirmation to support the Constitution of the United States, the constitution of this State, and all laws made in pursuance thereof, and faithfully to demean himself in the discharge of the duties of his office.

SEC. 3. The laws, public records, and the written, judicial, and legislative proceedings of the State, shall be conducted, promulgated, and preserved in the English language.

SEC. 4. Aliens who are or who may hereafter become *bona fide* residents of this State shall enjoy the same rights, in respect to the possession, inheritance, and enjoyment of property, as native born citizens.

SEC. 5. No county seat shall be removed until the point to which it is proposed to be removed shall be fixed by law, and a majority of the votes of the county voting on the question shall have voted in favor of its removal to such point.

SEC. 6. All property, both real and personal, of the wife, owned or claimed by marriage, and that acquired afterwards by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 7. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 8. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

BILL OF RIGHTS.

That the great and essential principles of liberty and free government may be recognized and established, we declare—

1. That all freemen, when they form a social compact, are equal in rights, and that no man or set of men are entitled to exclusive separate public emoluments or privileges, but in consideration of public services.

2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and therefore they have at all times an inalienable and indefeasible right to alter, reform, or abolish their form of government in such manner as they may think proper.

3. That all persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience, and no person can of right be compelled to attend, erect, or support any place of worship, or maintain any ministry, against his consent. That no human authority can in any case whatever interfere with the rights of conscience, and that no preference shall ever be given to any religious establishment or mode of worship.

4. That the civil rights, privileges, or capacities of a citizen shall in nowise be diminished or enlarged on account of his religion.
5. That all elections shall be free and equal.
6. That the right of trial by jury shall remain inviolate.
7. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right.
8. The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizures and searches, and no warrant to search any place, or to seize any person or thing, shall issue without probable cause, supported by oath or affirmation. In all criminal prosecutions the accused has a right to be heard by himself or counsel; to demand the nature and cause of the accusation, and have a copy thereof; to be confronted by the witness or witnesses against him; to have compulsory process for obtaining witnesses in his favor, and in all prosecutions by indictments or informations a speedy public trial by an impartial jury of the county or district in which the offence shall have been committed. He shall not be compelled to give evidence against himself, nor shall he be deprived of his life, liberty, or property, but by due course of law.
9. That no freeman shall be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property, but by the judgment of his peers or the law of the land.
10. No person, for the same offence, shall twice be put in jeopardy of life, limb, or liberty; nor shall any person's property be taken or applied to the public use, unless compensation be made therefor.
11. That all penalties shall be reasonable and proportionate to the nature of the offence.
12. No person shall be held to answer a capital or otherwise infamous crime, unless on the presentment or indictment of a grand jury, or by impeachment, except in cases of rebellion, insurrection, or invasion.
13. That no conviction shall work corruption of blood or forfeiture of estate.
14. That all prisoners shall be bailable by sufficient securities, unless in capital offences, where the proof is evident or the presumption great; and the privileges of *habeas corpus* shall not be suspended, unless when in the case of rebellion (insurrection) or invasion the public safety may require it.
15. That excessive bail shall in no case be required, nor excessive fines imposed.
16. That no "*ex post facto*" law, nor any law impairing the obligations of contracts, shall ever be made.
17. That forfeitures and monopolies are contrary to the genius of a republic, and shall not be allowed; nor shall any hereditary emolument, privileges or honors ever be granted or conferred in this State.
18. That the citizens have a right, in a peaceable manner, to assemble together for their common good; to instruct their representatives, and to apply to those entrusted with the power of government for redress of grievances or other purposes by address or remonstrance.

19. That the citizens of this State shall have a right to keep and bear arms for their common defence.

20. That no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

21. The military shall be kept in strict subordination to the civil power.

22. Emigration to or from this State shall not be prohibited.

23. Free negroes shall not be permitted to live in the State under any circumstances.

24. This enumeration of rights shall not be construed to deny or disparage others retained by the people, and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher power herein delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate, and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

SCHEDULE.

SECTION. 1. That no inconvenience may arise by reason of a change from a territorial to a permanent State government, it is declared that all rights, actions, prosecutions, judgments, claims, and contracts, as well of individuals as of bodies corporate, except the bill incorporating banks by the last territorial legislature, shall continue as if no such change had taken place, and all processes which may have issued under the authority of the Territory of Kansas shall be as valid as if issued in the name of the State of Kansas.

SEC. 2. All laws now in force in the Territory of Kansas which are not repugnant to this constitution shall continue and be of force until altered, amended, or repealed by a legislature assembled under the provisions of this constitution.

SEC. 3. All fines, penalties, and forfeitures to the Territory of Kansas shall enure to the use of the State of Kansas.

SEC. 4. All recognizances heretofore taken shall pass to and be prosecuted in the name of the State of Kansas, and all bonds executed to the governor of the Territory, or to any other officer of the court in his or their official capacity, shall pass to the governor and corresponding officers of the State authority and their successors in office, and for the use therein expressed, and may be sued for and recovered accordingly; and all the estates or property, real, personal, or mixed, and all judgments, bonds, specialties, choses in action, and claims or debts of whatever description, of the Territory of Kansas, shall enure to and rest in the State of Kansas, and be sued for and recovered in the same manner, and to the same extent, as the same could have been by the Territory of Kansas.

SEC. 5. All criminal prosecutions and penal actions which may have arisen before the change from a territorial to a State government, and which shall then be pending, shall be prosecuted to judgment in the name of the State of Kansas. All actions at law and suits in equity which may be pending in the courts of the Territory of Kansas

at the time of a change from a territorial to a State government may be continued and transferred to any court of the State which shall have jurisdiction of the subject matter thereof.

Sec. 6. All officers, civil and military, holding their offices under authority of the Territory of Kansas, shall continue to hold and exercise their respective offices until they shall be superseded by the authority of the State.

Sec. 7. This constitution shall be submitted to the Congress of the United States at its next ensuing session, and as soon as official information has been received that it is approved by the same, by the admission of the State of Kansas as one of the sovereign States of the United States, the president of this convention shall issue his proclamation to convene the State legislature at the seat of government within thirty-one days after publication. Should any vacancy occur by death, resignation, or otherwise, in the legislature or other office, he shall order an election to fill such vacancy: *Provided*, however, in case of removal, absence or disability of the president of this convention to discharge the duties herein imposed on him, the president *pro tempore* of this convention shall perform said duties; and in case of absence, refusal, or disability of the president *pro tempore*, a committee consisting of seven, or a majority of them, shall discharge the duties required of the president of this convention.

Before this constitution shall be sent to Congress, asking for admission into the Union as a State, it shall be submitted to all the white male inhabitants of this Territory, for approval or disapproval, as follows: The president of this convention shall, by proclamation, declare that on the twenty-first day of December, one thousand eight hundred and fifty-seven, at the different election precincts now established by law, or which may be established as herein provided, in the Territory of Kansas, an election shall be held, over which shall preside three judges, or a majority of them, to be appointed as follows: The president of this convention shall appoint three commissioners in each county in the Territory, whose duty it shall be to appoint three judges of election in the several precincts of their respective counties, and to establish precincts for voting, and to cause polls to be opened, at such places as they may deem proper in their respective counties, at which election the constitution framed by this convention shall be submitted to all the white male inhabitants of the Territory of Kansas in the said Territory upon that day, and over the age of twenty-one years, for ratification or rejection, in the following manner and form: The voting shall be by ballot. The judges of said election shall cause to be kept two poll books by two clerks, by them appointed. The ballots cast at said election shall be endorsed, "constitution with slavery" and "constitution with no slavery." One of said poll books shall be returned within eight days to the president of this convention, and the other shall be retained by the judges of election and kept open for inspection. The president, with two or more members of this convention, shall examine said poll books, and it shall appear upon said examination that a majority of the legal votes cast at said election be in favor of the "constitution with slavery," he shall immediately have the same transmitted to Congress of the United States, as hereinbefore provided; but if, upon such examination of said poll books, it shall

appear that a majority of the legal votes cast at said election be in favor of the "constitution with no slavery," then the article providing for slavery shall be stricken from this constitution by the president of this convention, and slavery shall no longer exist in the State of Kansas, except that the right of property in slaves now in this Territory shall, in no manner, be interfered with, and shall have transmitted the constitution, so ratified, (to Congress the constitution, so ratified,) to the Congress of the United States, as hereinbefore provided. In case of the failure of the president of this convention to perform the duties imposed upon him in the foregoing section, by reason of death, resignation, or otherwise, the same duties shall devolve upon the president *pro tem*.

SEC. 8. There shall be a general election upon the first Monday in January, eighteen hundred and fifty-eight, to be conducted as the election provided for in the seventh section of this article, at which election there shall be chosen a governor, lieutenant governor, secretary of State, State treasurer, and members of the legislature, and also a member of Congress.

SEC. 9. Any person offering to vote at the aforesaid election upon said constitution shall be challenged to take an oath to support the Constitution of the United States, and to support this constitution, under penalties of perjury under the territorial laws.

SEC. 10. All officers appointed to carry into execution the provisions of the foregoing sections shall, before entering upon their duties, be sworn to faithfully perform the duties of their offices, and in failure thereof be subject to the same charges and penalties as are provided in like cases under the territorial laws.

SEC. 11. The officers provided for in the preceding sections shall receive for their services the same compensation as given to officers performing similar duties under the territorial laws.

SEC. 12. The governor and all other officers shall enter upon the discharge of their respective duties as soon after the admission of the State of Kansas as one of the independent and sovereign States of the Union as may be convenient.

SEC. 13. Oaths of office may be administered by any judge, justice of the peace, or clerk of any court of record of the Territory or the State of Kansas, until legislature may otherwise direct.

SEC. 14. After the year one thousand eight hundred and sixty-four, whenever the legislature shall think it necessary to amend, alter, or change this constitution, they shall recommend to the electors at the next general election, two-thirds of the members of each house concurring, to vote for or against calling a convention: and if it shall appear that a majority of all citizens of the State have voted for a convention, the legislature shall at its next regular session call a convention, to consist of as many members as there may be in the house of representatives at the time, to be chosen in the same manner, at the same places, and by the same electors that choose the representatives; said delegates so elected shall meet within three months after said election, for the purpose of revising, amending, or changing the constitution, but no alteration shall be made to affect the rights of property in the ownership of slaves.

SEC. 15. Until the legislature elected in accordance with the pro-

visions of this constitution shall otherwise direct, the salary of the governor shall be three thousand dollars, and the salary of lieutenant governor shall be double the pay of a State senator, and the pay of members of the legislature shall be five dollars per diem, until otherwise provided by the first legislature, which shall fix the salaries of all officers other than those elected by the people at first election.

SEC. 16. This constitution shall take effect and be in force from and after its ratification by the people as hereinbefore provided.

Done in convention at Lecompton, in the Territory of Kansas, on the seventh day of November, in the year our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States of America the eighty-second. In testimony whereof, we have hereunto subscribed our names.

Atchinson County.

Jun. T. Hereford.
Isaac S. Hascal.
Jas. Adkins.

Bourbon County.

H. T. Wilson.
B. Little.

Leavenworth County.

Jesse Cornell.
John Dale Henderson.
Hugh M. Moore.
Jarret Todd.
Milburn Christison.
Samuel J. Kookagee.
Lucian J. Eastin.
Wm. Walker.
John W. Martin.
Green B. Redman.

Brown and Nemaha Counties.

Cyrus Dolman.
Henry Smith.

Douglas County.

W. S. Wells.
Alfred W. Jones.
Owen C. Stewart.
L. S. Boling.
W. T. Spicely.
H. Butcher.

Lykins County.

Jacob T. Bradford.
Wm. A. Haskell.

Jefferson County.

Thos. D. Chiles.
Alexander Bayne.
W. H. Swift.

Johnson County.

G. W. McKown.
Batt Jones.
J. H. Danforth.

Marshall County.

Wm. H. Jenkins.

Riley County.

John S. Randolph.
C. K. Mobley.

Doniphan County.

Thos. J. Key.
Samuel P. Blair.
James J. Reynolds.
William Mathews.
D. Vanderslice.
Harvey W. Forman.

Linn.

Milton E. Bryant.

*Shawnee County.*Samuel G. Reed.
Rusk Elmore.*Calhoun County.*

Henry D. Oden.

J. CALHOUN,
*President of the Convention and Delegate from the
 county of Douglas.*
 CHARLES J. McILVAINE,
Secretary of the Convention.

LECOMPTON, K. T., January 14, 1858.

The within is a true and perfect copy, as compared by me, of the constitution of the State of Kansas, prepared and submitted by the constitutional convention at Lecompton, on the seventh day of November, A. D. 1857.

J. CALHOUN,
President Constitutional Convention.

ORDINANCE.

Whereas the government of the United States is the proprietor, or will become so, of all or most of the lands lying within the limits of Kansas, as determined under the constitution; and whereas the State of Kansas will possess the undoubted right to tax such lands for the support of her State government, or for other proper and legitimate purposes connected with her existence as a State: Now, therefore, be it ordained by this convention, on behalf of and by the authority of the people of Kansas, that the right aforesaid to tax such lands shall be and is hereby forever relinquished, if the conditions following shall be accepted and agreed to by the Congress of the United States.

SECTION 1. That sections numbered 8, 16, 24, and 36, in every township in the State, or in case either of said numbered sections are or shall be otherwise disposed of, that other lands, equal thereto in value and as contiguous as may be, shall be granted to the State to be applied exclusively to the support of common schools.

SEC. 2. That all salt springs and gold, silver, copper, lead or other valuable mines, together with the lands necessary for their full occupation and use, shall be granted to said State for the use and benefit of said State; and the same shall be used or disposed of under such

terms and conditions and regulations as the legislature of said State shall direct.

SEC. 3. That five per centum of the proceeds of the sales of all public lands sold or held in trust or otherwise lying within the said State, whether sold before or after the admission of the State into the Union, after deducting all expenses incidental to the same, shall be paid to the said State of Kansas for the purpose following, to wit: two-fifths to be disbursed under the direction of the legislature of the State for the purpose of aiding the construction of railroads within said State, and the residue for the support of common schools.

SEC. 4. That seventy-two sections, or two entire townships, shall be designated by the President of the United States, which shall be reserved for the use of a seminary of learning, and appropriated by the legislature of said State solely to the use of said seminary.

SEC. 5. That each alternate section of land now owned, or which may hereafter be acquired, by the United States, for twelve miles on each side of a line of railroad to be established or located from some point on the northern boundary of the State, leading southerly through said State in the direction of the Gulf of Mexico, and on each side of a line of railroad to be located and established from some point on the Missouri river westwardly through said State in the direction of the Pacific ocean, shall be reserved and conveyed to said State of Kansas for the purpose of aiding in the construction of said railroad, and it shall be the duty of the Congress of the United States, in conjunction with the proper authorities of this State, to adopt immediate measures for carrying the several provisions herein contained into full effect.

LECOMPTON, K. T., *January 14, 1858.*

The within is a true and perfect copy of the *ordinance* adopted by the constitutional convention, and submitted as part of the constitution by the convention which assembled at Lecompton on the 5th day of September, A. D. 1857

J. CALHOUN,
President Constitutional Convention.

Report of the Board of Commissioners in reference to the late elections.

To his Excellency J. W. DENVER,
Governor of Kansas Territory:

The undersigned, a board of commissioners appointed by the acts of the governor and legislative assembly of the Territory of Kansas to investigate frauds committed at or tending to effect the result of the election held December 21, 1857, on the adoption of the constitution framed at Lecompton, and the election for officers under it, held January 4, 1858, beg leave to submit the following report:

A journal of the proceedings of the board has been regularly kept by the clerk, a copy of which is herewith presented.

All the testimony taken before the board is hereto attached and submitted. Each witness was examined in open session, and his testimony, when fully transcribed by the clerk, was read aloud to him, and he was permitted to make such corrections as he wished before signing. Every one offering himself as a witness was examined, and permitted to testify fully; and all were sought for who were said to have any knowledge relating to the subject of the investigation.

The testimony is arranged not in the order in which it was taken, but so as to present, in a distinct group, the evidence relating to each precinct to which the investigations of the board have been directed.

KICKAPOO PRECINCT—*Leavenworth County.*

The returns of the election at this precinct, December 21, 1857, on the adoption of the constitution framed at Lecompton, show a vote of 1,017 for the constitution with slavery, and 12 for the constitution without slavery—total 1,029 votes. From the best evidence the board could obtain, the whole number of legal voters living in this precinct cannot exceed 350 or 400, and it does not appear that there was a full turn out on that day of such voters.

Frauds were committed by persons voting more than once, first voting in their own names and then in the names of others. Purkins testifies that a man named Wilson told him he had voted six times that day, and would vote six times more if he could.

On the list of voters are found the names of Thomas H. Benton, Wm. H. Seward, Adam Bible, Horace Greeley, J. W. Denver, Edwin Forrest, John Fremont, and James Buchanan, together with the names of other persons known never to have been residents in the precinct.

The testimony further shows that on the 21st of December the polls were closed at 10 o'clock p. m., and that no voters other than those who were present during the day were there during the night. At 6 o'clock p. m., the vote was 610, and at the close 1,029.

Your committee have submitted the poll-book to the inspection of witnesses who are well acquainted throughout the precinct of Kickapoo, and find that a large majority of the names upon it are unknown to any of the witnesses. Laiblin has lived in Kickapoo three years,

and knows but seventy on the list who are legal voters ; Thompson has lived there two years, and knows but seventy ; Ralston has lived there nearly three years, and knows but 107.

It appears by the testimony of the clerk of the board that, on a comparison of the poll-books of the Kickapoo precinct for the election of 21st of December, 1857. with those of the 4th of January, 1858, there are but 153 names common to both poll-lists ; that there are 876 names on the poll-books of 21st December which do not appear on those of 4th of January ; and 842 on the latter that do not appear on the former. This would show, if they were all legal, 1,871 qualified voters in the precinct of Kickapoo. It also appears by the same testimony that twenty-four persons named *Jones* appear as voters on the list of 21st December, and twelve on that of 4th January ; and that, with a single exception, none of the *Joneses* voting on the 21st have the same Christian names with any of those who voted on the 4th.

From all the evidence relative to the election at this precinct on the 21st December, 1857, the board report that of the 1,029 votes returned about seven hundred were illegal and fraudulent.

The returns of the election at Kickapoo on the 4th January, 1858, for State officers under the constitution, show a vote of 952 for the Lecompton and 43 for the anti-Lecompton ticket.

The polls were opened about 10 o'clock a. m. Crowds of men, armed with bowie-knives, pistols, and fresh-cut clubs, surrounded the polls and forced off the free State men who were present, and attempted to challenge and keep a list of the voters. The United States troops were stationed at some distance from the polls, and out of sight of them, and lent no aid to prevent an outbreak ; owing in part to a misunderstanding as to whether the sheriff or the United States marshal had the right to control them. The result was that the voting was conducted by force and fraud during the entire day, as appears from the concurrent testimony of many of the best citizens of Leavenworth county. Their evidence shows that boys not more than fourteen or fifteen years of age were suffered to vote ; that in a number of instances the same persons voted again and again, without question or challenge from the judges ; and that one man stood at the window and voted six successive times before leaving it, and that one of judges, W. Franklin, openly connived at these barefaced and monstrous frauds. The judges of election announced the vote at a quarter past 4 o'clock as 467. One witness testified that from that time until the close not more than twelve ballots were cast ; another thinks not more than twenty ; and yet the vote returned is 995.

The board are of the opinion that when Mr. Ewing voted but 550 names were written on the poll-list, and all but two of the names occurring after that number were subsequently forged by officers of the election.

It appears that between three hundred and fifty and five hundred men were in Kickapoo on that day. The evidence shows that the legal vote was about three hundred and fifty to four hundred, and that fully six hundred votes were illegally cast, or were fraudulently recorded by officers of the election.

DELAWARE CITY PRECINCT—*Leavenworth County.*

The returns of the election of 21st December at this precinct show a vote of 254 for the constitution with slavery, and one for it without slavery. Every man who presented himself was permitted to vote, without regard to his place of residence. But one was challenged. Printed legal opinions were circulated along the Missouri border opposite this precinct to the effect that every man who might be in Kansas on that day would be a legal voter. Large numbers of Missourians were present and voted. One of the clerks of the election states that there were forty or fifty of his acquaintances living in Platte county, Missouri, who voted at this precinct, and that a number of them were known to John Miller, the judge who received the ballots and cried out the names. One vote was cast in the name of William McAlexander, who was a resident of Platte county, Missouri, and died there six months ago.

The vote at this precinct for officers under the constitution was said to be a full one, and there were but 170 ballots cast. Of these, 60 were votes of anti-Leocompton men, who probably did not vote for the constitution on the 21st, leaving but 110 legal voters in the precinct, who probably voted for the constitution on the 21st of December. Taking all the evidence into view, the board are of the opinion that of the 255 votes polled for the constitution on the 21st about 145 were illegal.

SHAWNEE PRECINCT—*Johnson County.*

The board were required by the act establishing it to make report of its investigations during the sessions of the legislature which terminates on the 12th day of February. Almost its entire time has been taken up in investigation of frauds committed at precincts north of the Kansas river, and in efforts to get the returns and poll-books of the two elections. No time was left in which to go to Johnson county and hold session there. Subpœnas were sent to Oxford and Shawnee for the officers of election, and those supposed to have knowledge of the frauds, to appear before the board at Lawrence, which is about thirty miles distant from those towns. Some of the persons to whom subpœnas were directed proved to be residents of Missouri; others had fled thither since the elections, and others refused to appear. A posse of fifteen mounted men were then sent with the sergeant-at-arms, who attached all the witnesses that could be found and brought them before the board. The testimony obtained is not as full as it probably would have been had there been time left for the board to have held sessions in the precincts in Johnson county, where the frauds were committed.

The poll-list of the election at this precinct on the 21st December shows a vote of 753 for the constitution with slavery, and none for it without slavery.

The town of Shawnee, at which the election was held, is seven miles from Westport, Missouri. It numbers about thirty houses. The

number of legal voters in the precinct is variously estimated by the witnesses at from 60 to 120. Under a late law of the territorial legislature, a census of that precinct was taken about the 21st of January, 1858, by Charles Mayo, who testifies that there are but 115 white male inhabitants over twenty-one years of age in the precinct, including all who were absent and were said to claim residence there.

The board are fully satisfied, from the evidence before them, that from 650 to 700 of the votes returned were illegally cast by residents of Missouri, or were forged on the list with the knowledge of the officers of the election.

At the election at this precinct on the 4th of January, 1858, Peter Behn, A. Byrum, and O. J. McFarland were judges, and Charles Godfrey and J. E. Harwood the clerks. Harwood lives in Westport, Missouri. The returns show 936 votes; 889 for the "democratic" and 47 for the free State ticket.

The number of men in the town on that day is estimated variously at from 50 to 175. The number of ballots cast is estimated by D. W. Brown, who stood by the polls all day, at 125. Charles Mayo, who took the census of the precinct, as above stated, testifies that there are but 58 names on this poll-list which appear on the census list.

McFarland, one of the judges of the election, recognizes only forty-three names out of the 936, three of these residents of Missouri and seven Shawnee Indians. Only four of the names recognised occur after the name of F. E. Bayley, which is the 143d name. McFarland and Godfrey state that Bailey voted late in the day. Brown states that Bailey was the last man that voted.

The names were written on separate sheets of paper, two columns being on each sheet. When the polls closed the judges and clerks signed their names at the bottom of a blank sheet of paper, and gave the ballot-box and the sheets containing the list of names to J. H. Danforth, of Westport, Missouri, who, McFarland states, "took them to Westport to count them." None of the judges or clerks went with Danforth. He was in a buggy with two other persons, of names unknown to the witness. Harwood left at the same time on horseback, and asked Godfrey to come to Westport next day and "help count up the votes."

Godfrey testifies that he went to Westport next day about ten or eleven o'clock and found Harwood, who had been clerk with him of the election at Shawnee the day before, writing names on a poll-list in a room over Colonel Boone's store. Godfrey commenced recording names on another list on which there were names already written, Harwood calling off to him from his list "for me to catch up." After he caught up with Harwood, they looked over the original poll-list of the election of 21st December at Shawnee, copied names on their respective lists from that. Alexander S. Johnson, who had been a judge of election at Shawnee on the 21st December, soon came in, and called off names from that list, and Harwood and Godfrey copied as he called. Godfrey remained about an hour and copied 200 to 300 names. J. H. Danforth was in the room part of the time. Godfrey left Harwood at work recording names. He met Peter Behn down stairs, who inquired how many names he had written. He was not

certain that these lists were for the Shawnee precinct ; but understood they were for the Kansas election. Godfrey's list appears to have been a copy of Harwood's. The schedule of the constitution requires that two poll-lists shall be made at each precinct, one to be kept by the judges for public inspection, and the other to be forwarded to John Calhoun, the president of the convention. It appears clear that these two lists were manufactured for the election of the 4th January at Shawnee precinct, and that Harwood's list was sent to Mr. Calhoun. Additional evidence of this is found in the fact that the poll-list of that election which was sent to Mr. Calhoun was shown by the board to McFarland, who states that all the names are in Harwood's handwriting ; and Harwood told him, (McFarland.) after the polls closed, that he would put him on the list, and his name actually appears about the close of the list, although he did not vote at all.

The poll-list when taken from Shawnee by J. H. Danforth covered about three or four separate pages of paper. As returned to Calhoun they covered fifteen pages.

The board state that of the 936 votes returned as having been polled at Shawnee on the 4th of January, 1858, for officers under the Lecompton constitution, not more than 115 are legal ; that not more than 143 votes, legal and illegal, were actually polled, and that 793 names were forged on the poll-lists by Charles C. Godfroy and J. E. Harwood, clerks of that election ; Peter Behn, a judge of that election, Alexander S. Johnson, a judge of the election at that precinct, on the 21st December, and J. H. Danforth, of Westport, conniving at the crime.

OXFORD PRECINCT—*Johnson County.*

This precinct borders on the Missouri line. The town of Oxford at which the election was held numbers ten or twelve houses, and is separated from Little Santa Fé, in Missouri, only by the Santa Fé road. The vote of this precinct on the 21st of December for the constitution, as returned to John Calhoun, is 1,266 for the constitution with slavery ; 2 for it without slavery.

C. Mayo, who took a census of this precinct in January, 1858, in pursuance of an act of the legislature, testifies that there are only 47 white male inhabitants over the age of 21 in the precinct. Walker estimates the voters at 39 ; Upham at 36 ; and Dennis, the United States marshal of Kansas, states that there cannot be over 70. Cox, a candidate on what was known as the "democratic ticket" for the legislature, under the Lecompton constitution, who canvassed the county before the election of the 4th of January, examined this poll-list of the 21st December and recognized only four of the names upon it. He estimates the whole number of voters in all Johnson county at 500.

The judges of this election were James H. Newman, C. C. Catron, and John T. Ector ; the last two boarded in Missouri. The board have been unable to reach either of these men in Kansas with its process.

That arrangements were made for a considerable importation of

voters from Missouri at this election is shown by the affidavit of Pomeroy. The board have been unable to ascertain any thing as to the persons who actually voted at Oxford on that day; but it is well established by the testimony that more than 1,200 of the votes returned were illegally cast, or were forged on the poll-lists.

The returns of the election at this precinct on the 4th of January for officers under the constitution show a vote of 738, all for the ticket headed "democratic." The judges were the same with those on the 21st of December.

The evidence shows that Catron, on opening the polls, invited all present, "no matter where they were from," to come up and vote; that the judges got drunk early; threatened challengers; decided that the possession of a claim in the precinct entitled a man to vote without regard to his place of residence; swore no man who was challenged; and told Walker "that it was useless to challenge any one, as they knew whether they were voters or not." A few free State men were present, but did not vote.

The witnesses concur in stating that nearly all the voters appeared to live in Missouri. Marshal Dennis states that four-fifths came up or down the Santa Fé road, which runs along the Missouri line; that a great part rode to the polls, voted, and left, without getting off their horses, and went away in the direction of Westport, Missouri. Walker, Upham, and Dare, testify to the same general effect. Dennis, at about the close of the polls, stepped to the window and asked the clerk to count the pages of names and estimate the votes. While the clerk was counting them, a judge stepped between him and Dennis, apparently to prevent the latter observing the number of pages. The clerk stated the number of names to be about 800. Dennis says he had before observed that there were but six pages of names; and that, counting the average number of names to a page on the poll-list returned to Calhoun, and shown him by the board, the number of names on the six pages was not over 270. He was about the polls all day, and is satisfied that not more than 250 men voted at the polls.

Charles Mayo testifies that he has carefully compared the poll-lists of the Oxford precinct for the election of the 21st of December, containing 1,266 names, with that of the 4th of January, containing 738 names, and finds that there are but 227 names common to both lists. If all the names on the lists were those of legal voters, this would prove that there were 1,777 voters living in that precinct.

Of the 738 votes returned for officers under the constitution, on the 4th of January, at Oxford, at least 696 were illegally received, or were forged on the poll-lists and fraudulently returned.

DELAWARE AGENCY PRECINCT—*Leavenworth County.*

This precinct is in the Delaware Indian reserve. The elections are held at the crossing of the Kansas river by the Leavenworth and Westport road. The precinct is commonly known as "Delaware Crossing."

There were no polls opened at this precinct on the 21st of December, 1857.

On the 4th of January, 1858, polls were opened here for an election for officers under the Lecompton constitution. James C. Grinter, Isaac Munday, and Theodore F. Garrett were the judges, and James Findlay, of Westport, and William Wilson, the clerks. Forty-three votes were polled. The ballots were not counted, but were said by Garrett to be all democratic. The names of the voters were written on three pages of cap paper, fastened together with red wafers, with the heading of a return before the list of names on the first page, and a certificate stating that all the votes were democratic at the bottom of the last page, signed by all the judges and clerks. The polls closed about sunset, and the officers of the election put this certified list into the ballot-box with the ballots. The lid of the box (which had been used as a money-box at the agency) was fastened on with screws.

On the night before the election, (Sunday, January 3d,) a number of persons were at the room of John Calhoun, No. 27 Planters' House, in Leavenworth city, and arranged to send John D. Henderson that night, to Shawnee precinct and to Delaware Agency, "to attend the election and stir up the voters." The persons present were J. Calhoun, president of the convention; F. J. Marshall, candidate for governor; J. P. Carr, candidate for Congress; B. J. Franklin, candidate for State senate; Robert Miller, Indian agent; Col. Clarkson, postmaster of Leavenworth; J. D. Henderson, special mail agent; A. J. Isaacs, L. S. Bolling, Oliver Diefendorf, (Mr. Calhoun's brother-in-law, and a commissioner of the election for Leavenworth county,) and a M. Martin, of Washington, D. C.

Mr. Calhoun had been at Leavenworth City since before the election of the 21st of December. These persons were in the habit of meeting frequently in his room, No. 27, and discussing political matters. F. J. Marshall had returned from Jefferson City, where he had been assured by several of the sheriffs there from counties bordering on Kansas, in presence of Governor Stewart, and with his approbation, that they would see that enough of their "boys" would go over and vote for him to insure his election.

On that evening, at Mr. Calhoun's room, a letter was written to send by Henderson, signed by Calhoun and several others present, addressed to J. H. Danforth and others at Shawnee, urging them to get out as large a democratic vote as possible, at Delaware Agency. There were other matters in the letter, but witnesses could not recollect them. The importance of getting a large democratic majority there was discussed, and it was admitted that Leavenworth county would be close. It was stated (and, as witness thought, in presence of Calhoun,) that Danforth could probably bring over from Johnson county one hundred men to vote for officers at Delaware Crossing, in Leavenworth county.

Henderson started Sunday night, and reached Shawnee at four o'clock a. m. He remained there during the day. It does not appear whether he saw Danforth or not. Danforth was there, and carried the Shawnee returns to Westport, where they were forged, as has been above stated. Henderson, while there, inquired for a man to carry a letter to Oxford, and next day Danforth was expecting the Oxford poll-book at Westport.

The board are of the opinion, from the evidence, that an understanding was had between Danforth and Henderson, by which Danforth should see that the Oxford and Shawnee returns were taken to Westport, and enough names forged on them to carry the Territory for the democratic ticket for State officers; while Henderson should secure the Delaware Agency returns, and have enough names forged on them to elect the eleven members of the legislature from Leavenworth county, and thus secure a majority for the Lecompton party in that body.

Henderson reached Delaware Agency about sunset, and offered to carry the returns to Leavenworth. The judges consented to entrust them to him; he waited there until the moon rose, about midnight, and then received them put up in a box, as above stated, and took them to Calhoun's room, at the Planters' House, in Leavenworth City. Mr. Diefendorf saw him lying down in No. 27 next morning, (Wednesday, January 6,) after breakfast. He said he had returned during the night. At ten or eleven o'clock in the morning, Bolling met Henderson on the street and asked the news; Henderson replied, "It's all right," and asked him not to mention his having been "down there."

On Wednesday evening, Calhoun left for Fort Leavenworth or Weston, and went thence to Lecompton about Saturday, the 9th January. On Wednesday, the 13th, he opened the returns of the 21st December on the constitution, and those of 4th January for officers under it, at Lecompton, in presence of Governor Denver, Mr. Deitzler, and others. Henderson was then under arrest at Lawrence, charged with forging returns from Delaware Crossing. He sent word to Calhoun by Mr. Noteware that morning "not to count the votes of that precinct until he (Henderson) could see Calhoun." Governor Denver states that, after Calhoun had opened the returns, "some one made inquiry for the returns from Delaware Crossing. Calhoun said that all the returns received by him from Leavenworth county were counted, but that those from Delaware Crossing were not there. He did not state whether he had or had not seen them." Deitzler states that Calhoun was asked what the vote of Delaware Agency was, and replied, "they are not here."

The board are satisfied from the testimony that Calhoun had, before leaving Leavenworth on Tuesday evening, seen the returns at his room, No. 27, to which Henderson took them.

Henderson states that he saw Diefendorf on Tuesday, "about noon of the 5th, about an hour after I reached here. I told him there was a box with the returns in room No. 27, at the Planter's House, and he could get them there." And that six days afterwards he asked him if he had sent them to Calhoun, and Diefendorf told him that he had. That he (Henderson) had not seen the returns, nor anything purporting to be the returns from Delaware Crossing since. He saw the judges of election have them at that precinct.

Diefendorf testifies that he saw Henderson lying down in Calhoun's room, after breakfast, Tuesday morning, and that Henderson said he had got back during the night, but did not tell him he had brought the returns. That on Monday following, at about 9 p. m., Henderson

sent Mr. Calhoun, nephew of John Calhoun, to ask him to go to the Planter's House; that he went and met Henderson there, who gave him a roll of papers, and told him they were the returns from Delaware Agency, and that he would find the box containing the ballots in room No. 27. That he (Diefendorf) did not unroll the papers or see any writing on them, but next morning sealed them up and directed them to Calhoun; that he had no other conversation with Henderson about them; did not learn the vote, and did not tell Henderson next morning that he had sent them to Calhoun.

On Saturday, the 16th of January, Calhoun went to Weston, Missouri, from Lecompton. On Monday or Tuesday, Diefendorf took the package containing the returns to Calhoun there, and said: "Here are the Delaware Agency returns, handed me by Mr. Henderson," and had no other conversation with him about them.

From the affidavits of Brooks and Ransom, it appears that on the 21st of January Calhoun gave the Delaware Agency returns to Brooks to take to Gen. L. A. McLean, chief clerk of the surveyor general's office at Lecompton. They were put up in a double envelope, the outer one directed to the postmaster at Lecompton, "to avoid annoyance and detention." Brooks delivered them to McLean on the 27th of January, at Lecompton. Cole saw a copy of those returns in Missouri, on the 1st of February, in the hands of Jack Thompson, of Lecompton, an officer of Judge Cato's court, who was there with Calhoun. It was a roll of six sheets of paper and contained 343 names.

On the first day of the session of the board, January 18, 1858, its attention was called to the report, then current in the community, that the returns from Delaware Agency had been altered by John D. Henderson from 43 to 543. The board sat at Leavenworth from that day until the 30th January. Henderson testified before it on the 25th; Franklin on the 28th. The subpoena of the board was issued on the third day of its session for Calhoun, but he remained at Weston, and has never been within reach of the process of the board since its organization.

On the 30th of January, the board sat at Lawrence, and General L. A. McLean, of Lecompton, chief clerk in the office of Surveyor General Calhoun, appeared before it and testified. He said that all the returns of the election of the 21st of December, on the adoption of the constitution, and the election of the 4th of January for officers under it, which were sent from the several precincts to Calhoun, had been in his (McLean's) custody until they were opened and counted in presence of Governor Denver, Mr. Dietzler, and others, as above stated; that after they were opened and counted they were again placed in his custody; that, about the 19th or 20th of January, a messenger from Platte county, Missouri, whose name he did not recollect, came to him at Lecompton, and said "Calhoun wanted all the returns that had been opened sent over to him;" that the messenger brought no letter; and that he sent all the opened returns to Calhoun by him, and took no receipt for them.

The board subsequently received information which led it to suspect that the returns had been buried by McLean on the night of the 28th of January under a wood-pile, on the premises adjacent to the sur-

veyor general's office. The members of the board therefore entered a complaint before the probate judge of Douglas county, under the 9th article of the act entitled "practice and proceedings in criminal cases," (Kansas Statutes, p. 597,) setting forth that, under the acts establishing the board, they had a right to the temporary possession of the election returns of the 21st of December and 4th of January, for the purposes of their investigation; that John Calhoun, the legal custodian of these returns, was absent from Kansas, and beyond the reach of the process of the board; that L. A. McLean, in whose custody Calhoun had left them, had testified that he had sent the returns to Calhoun, in Missouri; that the board had reason to believe that the returns had been embezzled and secreted on or adjacent to the premises of the surveyor general at Lecompton, &c.

On the complaint, a search warrant was issued by the court, addressed to the sheriff of the county, who executed it against "the solemn protest of McLean." He discovered a box, supposed to contain the returns, buried under a wood-pile on the premises, on the 2d February, 1858. The box was delivered unopened to the probate judge in open court, and was opened, by order of the court, in the presence of J. W. Denver, C. W. Babcock, and G. W. Deitzler, who testified they were the same returns opened by Calhoun in their presence on the 13th January. The court ordered that the returns should be delivered to the board, to be by it delivered in ten days to your excellency, and by you held subject to the order of the legal custodian. The board have delivered them all to your excellency in compliance with the order of the court.

At the time the returns were found a subpoena was served on L. A. McLean to appear again before the board, but he failed to come. An attachment was issued for him, but he escaped from Lecompton and fled the Territory.

Copies of the complaint of the board, the search warrant, the protest of McLean, the return of the sheriff, testimony of Messrs. Denver, Babcock, and Deitzler, and of the order of the court, are herewith presented.

Returns from Delaware Agency precinct were found among the papers delivered to the board. The poll-list was recognised by Diefendorf, by ink blots on the back of it, as the roll handed him by Henderson. It consists of six half-sheets of paper fastened together with light-colored wafers, and a strip of paper, containing only the certificate, fastened on at the bottom. The piece of paper the certificate is upon is wider than the pieces to which he is attached. There are 379 names recorded on this list.

The board issued subpoenas for the judges and clerks of the election, but succeeded in finding only Grinter and Munday, who had previously testified on the 21st and 26th of January. On the 4th of February they appeared and testified that this poll-list was all a forgery, except the paper fastened to the end of it containing their original certificate. A tally-list was also found with the poll-list, which they said they had never before seen. Their testimony on both examinations is consistent, and in the judgment of the board strictly true. On both occasions they stated that the vote returned by them was but 43.

With these returns the board found a certificate signed by the

judges and clerks of Delaware Crossing, and sworn to on the 18th January, 1858, before Samuel Salter, claiming to be a justice of the peace of Johnson county, as follows:

TERRITORY OF KANSAS,
County of Leavenworth.

The undersigned, judges and clerks of the election held for State officers and members of the State legislature, held at the precinct known as the Delaware Agency, on the 4th day of January, A. D. 1858, do hereby certify that the returns made by us of said election were correct and genuine, and that any statement made by any person as to the vote of such precinct can only be determined as to its truth or its falsity by a reference to said returns made by us as managers and clerks of said election at said precinct.

ISAAC MUNDAY,	}	<i>Judges.</i>
THEODORE F. GARRETT,		
JAMES C. GRINTER,		
W. C. WILSON,	}	<i>Clerks.</i>
JAMES FINDLAY,		

The character of the certificate, which omits to state the number of votes actually polled, and the manner in which it was got up, leave no doubt in the mind of the board that it was obtained from these officers of election for the express purpose of concealing and sustaining the fraud. Cole states that he was at Weston, Missouri, from the 13th to the 22d January; asked Calhoun about the returns from Delaware Crossing. Calhoun replied that they showed a vote of 343, but that there had been a charge of some irregularity in them, and "he had sent a messenger down to take the affidavit of the judges; that the messengers had returned that day, and from the affidavit of the judges the democratic ticket would be elected." The messenger was "Jim Murphy," and was then with Calhoun.

Munday states that he signed the certificate for the purpose of relieving himself from any suspicion of having been guilty of a fraud; that J. H. Danforth wrote it (the person to whom Henderson carried the letter from Calhoun and others, and who was engaged in the forgery of the Shawnee returns) at Westport, Missouri, where it was sworn to, before Salter, on the 18th of January; that he (Munday) suggested that the certificate should state what the vote as returned by the judges was, but that "Mr. Findley said he thought it would be better to state that the returns, as made out by us, were correct. Mr. Danforth gave as his opinion that it would be the proper way, and so wrote the affidavit." The statement and affidavits when signed were left with Danforth. Grinter corroborates this statement.

The certificate and affidavits were sent by Calhoun to Lecompton with the forged returns and tally-sheet from Delaware Agency, and were found in the same package with them. A copy of the certificate and affidavit were sent by him to Governor Denver.

From the evidence taken before them, the board state that the returns from the Delaware Agency precinct were honestly made out by the officers of the election; and subsequently three hundred and thirty-six names were forged upon them by or with the knowledge of John

D. Henderson ; and that John Calhoun was *particeps criminis* after the fact.

The board report that of the votes returned of the election of the 21st December, 1857, on the slavery clause of the constitution framed at Lecompton, held at the precincts of Kickapoo, Delaware, Oxford, and Shawnee, about the following numbers were illegal and fraudulent:

At Kickapoo.....	700
At Delaware City.....	145
At Oxford.....	1,200
At Shawnee.....	675
Total.....	<u>2,720</u>

And of the votes returned of the election of the 4th of January, 1858, for officers under the constitution framed at Lecompton, held at the precincts of Kickapoo, Delaware City, Delaware Agency, Oxford, and Shawnee, about the following numbers were illegal and fraudulent:

At Kickapoo.....	600
At Delaware City.....	5
At Delaware Agency.....	336
At Oxford.....	696
At Shawnee.....	821
Total.....	<u>2,458</u>

The board has no information that frauds have been committed tending to affect the results of either of the elections above referred to at any precincts in the Territory other than those already spoken of in the report, except at the precinct of Marysville, in Marshall county, and that of Mound City, in Linn county. In a proclamation setting forth the result of the election for officers under the Lecompton constitution, made by C. W. Babcock, president of the council, and G. W. Deitzler, speaker of the house of the territorial legislature, occurs the following statement:

"In Linn county, at Mound City polls, the ballot-box was forcibly taken and destroyed by a mob under the command of one Hamilton, who professed to be a free State man, after about one hundred votes (all free State) had been cast, by which the free State party lost two representatives and one senator."

The board did not investigate the circumstances connected with this alleged outrage, owing to the remoteness of the precinct from any place at which it held its sessions, and to the fact that they were advised that the officers of election were about to present an official statement of the facts to Mr. Calhoun.

From Marysville, in Marshall county, there were 273 votes returned as cast for the constitution on the 21st of December. This is a small trading post on the remote outskirts of the white settlements of the Territory. The vote returned from there on the 4th of January was but 119, and there is good reason to believe that there was a full vote for the precinct. The remoteness of the town, and the brief time al-

powered the board to investigate the frauds, prevented an inquiry into the circumstances attending the election and returns from this precinct of the 21st of December.

The only poll-books and returns which the board have had are the poll-books of the Kickapoo election of the 21st of December, and of the Delaware City election of the 4th of January, and the returns and poll-books delivered to it by the probate court of Douglas county. To these only do the witnesses refer their testimony.

In conclusion, the board state that the result of their labors is necessarily incomplete, owing to the shortness of the time which could be given to the investigation and to the difficulties they met in making it. They were unable to get the original poll-books of the election at Delaware on the 21st of December, Delaware Crossing of the 4th of January, or of either of the elections at Kickapoo, Oxford, or Shawnee, by any process on the officers of the election. A mere chance enabled them to find the Kickapoo poll-books of the 21st of December. Four of the five officers of the election at Kickapoo could not be found to be brought before the board; three at Delaware City, three at Delaware Crossing, three at Shawnee, and five at Oxford. John Calhoun, in whose custody were all the returns of those elections, was absent from the Territory during the whole period of the session of the board—a great part of the time at Weston, Missouri. The fortunate discovery of the returns concealed at Lecompton, however, has brought to light evidence of stupendous frauds affecting the two elections, which, in the absence of most of the perpetrators and their accomplices, might have been never proved at all, or proved too late.

HENRY J. ADAMS,
President.

THOS. EWING, JR.,
E. L. TAYLOR,
DILLON PICKERING,
J. B. ABBOTT,
H. T. GREEN,
Commissioners &c.

JOURNAL.

Proceedings of the Board of Commissioners for the investigation of election frauds during its session from the 19th day of January, A. D. 1858, to the 15th day of February, A. D. 1858.

TERRITORY OF KANSAS, {
County of Leavenworth. }

JANUARY 19, 1858.

At a meeting of the board of commissioners, (created by acts of the governor and legislative assembly of the Territory of Kansas, passed January 13, A. D. 1858, and January 18, A. D. 1858, to investigate frauds in the election of the 21st December, 1857, for the Lecompton constitution, and the election of the 4th of January, A. D. 1858, for officers under the constitution,) held in the city of Leavenworth, Kan-

Territory, this January 19, A. D. 1858, the following members of the board were present, to wit: Henry J. Adams, Thos. Ewing, jr., J. B. Abbott, Dillon Pickering, and Henry T. Green. Absent: Enoch L. Taylor, and Eli Moore.

On motion, Henry J. Adams was elected president of the board, Scott J. Anthony clerk, and John E. Stewart sergeant-at-arms.

The following form of oath was administered to the members of the board present, to wit:

The undersigned, members of the board of commissioners appointed by the act of the governor and legislative assembly of the Territory of Kansas, of January 13, A. D. 1858, and of January 18, A. D. 1858, do severally swear that they and each of them will fairly and impartially discharge the duties of their office according to law.

HENRY J. ADAMS.

THOS. EWING, JR.

D. PICKERING,

J. B. ABBOTT.

H. T. GREEN.

TERRITORY OF KANSAS, }
County of Leavenworth. }

I, George W. Perkins, judge of the probate court within and for the county and Territory aforesaid, do hereby certify that Henry J. Adams, D. Pickering, Thos. Ewing, jr., J. B. Abbott, and H. S. Green, personally appeared before me and made oath as written and subscribed above.

In testimony whereof I have hereunto set my hand and affixed [L. s.] the seal of said county, at office, this 19th day January, A. D. 1858.

GEORGE W. PERKINS, *Judge.*

I, Scott J. Anthony, do solemnly swear that I will fairly and impartially discharge the duties required of me as clerk of the board of commissioners appointed by acts of the governor and legislative assembly of the Territory of Kansas, passed January 13, 1858, and January 18, A. D. 1858, according to the best of my ability, and in conformity to law.

SCOTT J. ANTHONY.

Sworn to and subscribed before me, president of the board of commissioners, January 19, A. D. 1858.

HENRY J. ADAMS.

President of the Board of Commissioners.

I, John E. Stewart, do solemnly swear that I will fairly and impartially discharge the duties required of me as sergeant-at-arms of the board of commissioners appointed by acts of the governor and legislative assembly of the Territory of Kansas, passed January 13,

A. D. 1858 and January 18, 1858, according to the best of my ability, and in conformity to law.

JOHN E. STEWART.

Sworn and subscribed before me, president of the board of commissioners, this January 19, A. D. 1858.

HENRY J. ADAMS.

President of the Board of Commissioners.

On motion, the following was adopted as the form of oath to be administered to witnesses:

"You do solemnly swear that the evidence you shall give to this board touching the investigation now pending before them shall be the truth, the whole truth, and nothing but the truth, as you shall answer to God."

The following was adopted as the form for affirmation:

"You do solemnly and sincerely affirm that the evidence shall you to give this board of commissioners touching the investigation now pending before them shall be the truth, the whole truth, and nothing but the truth, and this you do under the pains and penalties of perjury."

On motion, the board adjourned until to-morrow morning at 9 o'clock.

SCOTT J. ANTHONY, *Clerk.*

WEDNESDAY, January 20, 1858.

Board met pursuant to adjournment. Present: Adams, Abbott, Ewing, Green, and Pickering.

Subpœnas were issued by the president of the board for the following named persons: Richard Hathaway, William Saunders, Captain Brown, William Perry, E. M. Lowe, and V. B. Young; also an attachment for William Perry for failing to produce the returns, poll-list, and ballots, filed in his office as clerk of the board of county commissioners, for the election held at Kickapoo on the 21st day of December, 1857.

The following witnesses were sworn and testified, to wit:

J. W. Morris, J. C. Vaughan, J. G. Losee, V. B. Young, William Saunders, Adam Fisher, J. M. Dickson, John H. Chandler, E. M. Lowe, and William Perry, county recorder, who brought before the board a certified copy of the election returns from Kickapoo precinct, Leavenworth county, Kansas Territory, for the election held in said precinct on the 21st day of December, A. D. 1857.

On motion, the board adjourned until to-morrow morning at 9 o'clock.

SCOTT J. ANTHONY, *Clerk.*

THURSDAY, January 21, 1858.

Board met. Present: Adams, Abbott, Ewing, Green, and Pickering. Mr. O. B. Williams, R. C. Thompson, J. W. Stone, and Elisha Willett, were appointed and sworn as assistants to the sergeant-at-arms.

Subpœnas were issued by the president of the board for the following named witnesses, to wit: G. B. Redman, to appear and testify,

and to bring with him the poll-books of Delaware City precinct; also for A. Sturgis, John C. Grinter, Alexander Ralston, Lieutenant Harrison, United States army, William H. Elliott, Joseph Cowell, Mr. Hanill, B. F. Robinson, Theodore Garrett, William Hurt, James M. Churchill, Peter H. Myers, J. G. Williams, Samuel Edwards, William Franklin, William Redmon, and John Calhoun.

Attachments were issued for John Calhoun and William Franklin.

The following named persons were sworn and testified, to wit: John A. Brown, captain United States army, William W. Gallagher, Richard Hathaway, William H. Elliott, Joseph Cowell, Thomas Hanill, and Lieutenant A. G. Harrison, United States army. Adjourned.

SCOTT J. ANTHONY, *Clerk*.

FRIDAY, *January 22, 1858.*

Board met pursuant to adjournment. Present: Adams, Abbott, Ewing, Green, and Pickering.

A subpoena was issued for James E. Bruce.

The following witnesses were sworn and testified, to wit: Alexander Ralston, J. H. Noteware, James M. Churchill, Andrew Sturgis, Sylvester Loring, Green B. Redman, who brought before the board the election returns and poll lists of Delaware Precinct, Leavenworth county, Kansas Territory, for the election of the 4th of January, A. D. 1858, for state officers and members of the legislature, under the Lecompton constitution.

Adjourned until to-morrow at 9 o'clock a. m.

SCOTT J. ANTHONY, *Clerk*.

SATURDAY, *January 23, 1858.*

Board met. Present: Adams, Abbott, Ewing, Pickering and Green. Mr. E. L. Taylor, having reported himself before the board as one of the commissioners appointed by the governor and legislative assembly, the form of oath taken by the other members was duly administered by the president; after which he took his seat as a member of the board.

Subpœnas were issued by the president for J. M. Miller, John L. Thompson, John D. Henderson, and Wm. Ashton.

Henderson and Ashton not complying with the writ of subpoena, attachments were issued for them.

The following witnesses were sworn and testified, to wit: James C. Grinter, James E. Bruce, Henry C. Fields, and Wm. Ashton.

On motion, the board adjourned until Monday morning at 9 o'clock

SCOTT J. ANTHONY, *Clerk*.

MONDAY, *January 25, 1858.*

Board met pursuant to adjournment. Present: Adams, Abbott, Ewing, Green, Pickering, and Taylor.

Subpœnas were issued for John Baker, Lucien J. Eastin, J. J. Clarkson, Marion Todd, James Findlay, Geo. H. Stephens, H. C. Bradley, and Mr. Lester; also attachments for Peter H. Myers,

Samuel E. Edwards, J. W. Williams, M. Miller, John L. Thompson, George H. Stephens, and H. C. Bradley.

The following named witnesses were examined, after being duly sworn, to wit: James R. Whitehead, W. W. Gallagher, Lucien J. Eastin, John D. Henderson, Charles F. Laiblin, John Barker, and John L. Thompson.

On motion, adjourned until to-morrow morning at 9 o'clock.

SCOTT J. ANTHONY, *Clerk*.

TUESDAY, *January 26, 1858.*

Board met. Present: Adams, Abbott, Ewing, Green, Pickering, and Taylor.

Subpœnas were issued by the president for J. G. Spivy and A. B. Miller.

The following witnesses were sworn and examined, to wit: George H. Stephens, H. C. Bradley, J. H. Noteware, J. G. Spivy, and A. B. Miller.

Adjourned until to-morrow morning at 9 o'clock.

SCOTT J. ANTHONY, *Clerk*.

WEDNESDAY, *January 27, 1858.*

Board met. Present: Adams, Abbott, Ewing, Green, Pickering, and Taylor.

Marion Todd and Isaac Munday were sworn and testified; after which the board adjourned until to-morrow at 9 o'clock a. m.

SCOTT J. ANTHONY, *Clerk*.

THURSDAY, *January 28, 1858.*

Board met pursuant to adjournment. Present: Adams, Ewing, Abbott, Green, Pickering, and Taylor.

A subpoena was issued by the president for B. J. Franklin.

B. J. Franklin, Jno. C. Vaughan, and Wm. Turner were sworn and testified.

On motion, the board adjourned, to meet at Lawrence, Douglas county, Kansas Territory, at call of the president.

SCOTT J. ANTHONY, *Clerk*.

LAWRENCE, DOUGLAS COUNTY, K. T.,
Saturday, January 30, 1858.

Board met, at call of the President, at the office of the probate judge of Douglas county, K. T. Present: Adams, Abbott, Ewing, Pickering, and Taylor.

Subpœnas were issued by the president for L. A. Maclane, Major Bolling, J. B. Newsome, J. M. Sherrard, and Oliver Deifendorf; also for L. A. Maclane to bring before the board all the returns for the vote upon the Lecompton constitution held upon the 21st of December, 1857, and for officers under the constitution, held on the 4th of January, A. D. 1858; also an abstract of all the votes counted by Col-

houn and the names of the commissioners appointed for the several counties in the Territory by Calhoun.

Maclane, Newsome, and Sherrard were sworn and testified; after which the board adjourned until Monday next at 9 o'clock a. m.

SCOTT J. ANTHONY, *Clerk*.

MONDAY, *February 1, 1858.*

Board met at the Masonic Hall, in Lawrence. Present: Adams, Abbott, Ewing, Pickering, and Taylor.

Subpoenas were issued for O. F. Currier and Wm. Y. Roberts.

Currier and Roberts were examined and sworn.

Board adjourned, to meet at the same place to-morrow at 9 o'clock a. m.

SCOTT J. ANTHONY, *Clerk*.

TUESDAY, *February 2, 1858.*

Board met. Present: Adams, Abbott, Ewing, Pickering, and Taylor.

Oliver Deifendorf was sworn and examined.

Subpoenas and attachments were issued for L. A. Maclane to appear before the board and show cause why he had not complied with the subpoena commanding him to bring before them the election returns for the elections of the 21st of December and of the 4th of January; also subpoenas and attachments for J. M. Sherrard, Mr. Findlay, N. C. Williams, Theo. F. Garrett, Isaac Munday, and James C. Grinter, to appear and testify.

Board adjourned, to meet again to-morrow at 9 o'clock a. m.

SCOTT J. ANTHONY, *Clerk*.

WEDNESDAY, *February 3, 1858.*

Board met. Present: Adams, Abbott, Ewing, Green, Pickering, and Taylor.

The probate judge of Douglas county, on complaint of the board, had issued a search warrant directing the sheriff of said county to search in and about the office of the surveyor general at Leocompton, and in and about the building adjacent thereto, for the election returns for the elections held in the several precincts in the Territory on the 21st day of December, 1857, and 4th of January, 1858. On such returns being produced before the court, the judge ordered that they be given in charge of the board of commissioners for the investigation of election frauds, for the purpose of aiding in their investigation, for a space of time not to exceed ten days; then they be delivered to the governor of the Territory, to be by him given into the possession of the proper custodian of the same.

Samuel J. Jones, H. Miles Moore, and George W. Perkins were sworn and testified.

On motion, the board adjourned until to-morrow morning at 9 o'clock.

SCOTT J. ANTHONY, *Clerk*.

THURSDAY, *February 4*, 1858.

Board met pursuant to adjournment. Present: Adams, Abbott, Ewing, Green, Pickering, and Taylor.

George C. Vanzandt, Isaac Munday, and James C. Grinter were sworn and testified.

Adjourned until to-morrow at 9 o'clock a. m.

SCOTT J. ANTHONY, *Clerk*.

FRIDAY, *February 5*, 1858.

Board met. Present: Adams, Abbott, Green, Pickering, and Taylor.

Subpoenas were issued for N. B. Brooks and N. C. Ransom, who appeared before the board, were sworn and testified.

On motion, the board adjourned until to-morrow morning at 9 o'clock.

SCOTT J. ANTHONY, *Clerk*.

SATURDAY, *February 6*, 1858.

Board met. Present: Adams, Abbott, Green, Pickering, and Taylor.

Subpoenas were issued for Governor J. W. Denver and George W. Deitzler.

J. W. Denver, George W. Deitzler, Charles Mayo, and James F. Walker were sworn and testified.

Subpoenas were then issued for Wm. H. Cole and Loton W. Jones; after which the board adjourned until Monday next at 9 o'clock a. m.

SCOTT J. ANTHONY, *Clerk*.

MONDAY, *February 8*, 1858.

Board met. Present: Adams, Abbott, Pickering, Green, and Taylor.

On motion, it was resolved that the regular hours of the session of this board shall be from 9 o'clock a. m. until 12 o'clock m., from 1 o'clock p. m. until 5 p. m., and from 6 o'clock p. m. until 9 p. m.; and that no member of the board shall absent himself from the regular hours of session without permission from a majority of the members present.

On motion, it was ordered that the board proceed to make out a report from the evidence of frauds at the elections of the 21st December and 4th of January, which they have before them, and that, in order to expedite matters, each member of the board take charge of the evidence procured relating to some one precinct, and make out a report for that precinct alone, and that the making out these reports shall not interfere with the examination of witnesses.

On motion, the board adjourned until to-morrow at the regular hour for session.

SCOTT J. ANTHONY, *Clerk*.

TUESDAY, *February 9, 1858.*

Board met. Present: Adams, Abbott, Green, Pickering, and Taylor.

Ordered, That copies be taken from the poll-books of Kickapoo precinct, Leavenworth county, Oxford and Shawnee, in Johnson county, and Delaware Agency and Delaware City, in Leavenworth county, and that copies be taken for both elections in order to compare the lists of names recorded on said poll-books.

Ordered, That the clerk shall make a copy of all the evidence taken before the board, or which shall hereafter be taken.

Isaac Munday and James C. Grinter were sworn and testified.

Board adjourned, to meet at its regular hour to-morrow morning, after issuing subpoenas for John T. Ector, John Evans, G. Byram, D. W. Brown, A. A. Cox, Charles Godfrey, and Oliver J. McFarland.

SCOTT J. ANTHONY, *Clerk.*

WEDNESDAY, *February 10, 1858.*

Board met. Present: Adams, Abbott, Ewing, Green, Pickering, and Taylor.

Subpoenas were issued for Charles Torry and L. S. Boling.

Loton W. Jones and Wm. H. Cole, jr., were sworn and testified.

Mr. Willett, deputy sergeant-at-arms, reported to the board that he, together with the sergeant-at-arms, who had been sent by the board for witnesses residing in Johnson county, were not sufficiently strong to bring such witnesses before the board; that the witnesses had armed themselves, and were preparing to resist by force the authority of the board.

On motion, it was resolved that the sergeant-at-arms be empowered to summon to his aid and deputize any number of men he might deem sufficient, not to exceed twenty-five, to aid in the execution of such writs of subpoena as he had in his possession to serve upon the judges and clerks of election in Johnson county.

On motion, the board adjourned until to-morrow at 9 o'clock a. m.

SCOTT J. ANTHONY, *Clerk.*

THURSDAY, *February 11, 1858.*

Board met at the regular hour. Present: Adams, Abbott, Ewing, Green, Pickering, and Taylor.

Thomas Ewing, jr., Samuel Walker, L. S. Boling, and Elias S. Dennis, United States marshal, were sworn and testified.

Board adjourned.

SCOTT J. ANTHONY, *Clerk.*

FRIDAY, *February 12, 1858.*

Board met. Present: Adams, Abbott, Ewing, Green, Pickering, and Taylor.

Thomas Ewing, jr., was sworn and testified; after which the board adjourned.

SCOTT J. ANTHONY, *Clerk.*

SATURDAY, *February 13, 1858.*

Board met. Present: Adams, Abbott, Ewing, Green, Pickering, and Taylor.

The following witnesses were sworn and testified, to wit: J. Sabin, A. A. Cox, Oliver J. W. McFarland, B. F. Dare, Charles Godfrey, and David W. Brown.

On motion, adjourned until Monday next at 9 o'clock a. m.

SCOTT J. ANTHONY, *Clerk.*

MONDAY, *February 15, 1858.*

Board met. Present: Adams, Abbott, Ewing, Green, and Pickering.

Mr. Samuel C. Pomeroy was sworn and testified.

On motion, it was resolved that when the board adjourn they adjourn to meet at Leavenworth City; and that copies be made of all the evidence taken before the board, and it, together with a certified copy of the journal, be forwarded to Washington by a special messenger at the earliest possible period.

Ordered, That Henry J. Adams, Thomas Ewing, jr., and Henry T. Green be appointed a committee to superintend the preparing of the report to be printed, and also to select a messenger to take charge of the certified copies of testimony, &c., to be forwarded to Washington, and that the other members of the board be excused from further attendance unless called together by the president.

On motion, the board adjourned.

SCOTT J. ANTHONY, *Clerk.*

I do hereby certify that the foregoing is a true and correct copy of the journal of proceedings of the board of commissioners for the investigation of election frauds, as recorded by me while said board was in session.

SCOTT J. ANTHONY,

Clerk of the Board of Commissioners.

OXFORD PRECINCT.

January 4, 1858, and December 21, 1857.

No. 59. Charles Mayo, "recalled."

" 45. William Y. Roberts.

" 57. James F. Walker.

" 73. David Upham.

" 65. Elias S. Dennis, United States marshal.

" 68. A. A. Cox, "recalled."

" 70. B. F. Dare.

SHAWNEE PRECINCT.

No. 59. Charles Mayo.

" 45. William Y. Roberts.

SPRING HILL.

January 4.

No. 68. A. A. Cox.

No. 59.

CHARLES MAYO being sworn, deposes and says :

I reside at Olatha, in Johnson county, Kansas territory ; was there at the election on the 4th of January. I know of nothing fraudulent in the conducting of that election at that precinct.

Under an act of the territorial legislature I, together with Benjamin F. Dare, were appointed commissioners to take a census of the township of Oxford ; Samuel M. Connatzen and myself were appointed to take the census of Shawnee ; both in Johnson county. I went up on that duty on the 21st of January ; went over all the township of Oxford, and the whole number of white male inhabitants over twenty-one years of age then residing in the township was forty-two.

I performed that duty fairly and impartially to the best of my ability, according to the act appointing me to take such census. The act required me to take the names of every free white male inhabitant over twenty-one years of age, and to visit every house, tent, or cabin in which I could find inhabitants. The act also required me to take the date of settlement of every inhabitant. Out of the forty-two only fourteen dated their residence prior to the fifth of April, 1857. I also went over the whole township of Shawnee, visited every house, and the whole number of white male inhabitants over the age of twenty-one years was one hundred and fifteen. I performed the duties in the same manner and with the same faithfulness as at Oxford. I have learned that the vote of Shawnee, at the election of the 4th of January, was eight hundred and ninety-four ; and at Oxford, at the same election, between seven and eight hundred.

CHARLES MAYO.

Recalled. I have examined the poll books of the election held for Shawnee township on the 4th of January, 1858, now before this board, which contains a list of nine hundred and thirty-six names of persons as having voted at that place on that day. I have carefully compared the same with the census returns of that township, of which I have before testified. I find that poll-book contains but fifty-eight names which are also upon that census list. I also find upon that poll-book the names of several persons who live in Westport, Missouri. I also find the name of William Fisher, jr., whom I know to reside in Kansas city, Missouri, upon the poll-books as voting at Shawnee on that day and at the Delaware Crossing precinct also.

If the other hundreds which appear upon the poll-books of December 21st. and January 4th., and not on the census list, were residents of Shawnee and of Oxford when the census was taken, I should have known it ; but I did not find them. I saw in taking the census of Shawnee and Oxford several houses that were not then inhabited ; I inquired of the nearest inhabitants who had formerly resided there, and took the names of all such as I could learn to be actual residents.

CHARLES MAYO.

Recalled. I have carefully compared the poll-books of the election at Oxford held January 4th, 1858, with the poll-book of the election

held December 21, 1857, at the same precinct—the former indicating 738 votes, and the latter 1,266 votes; and I find but two hundred and twenty-seven (227) names that are upon both poll-books.

CHARLES MAYO.

No. 45.

WILLIAM Y. ROBERTS, being called, affirms:

I reside in Wyandott, Leavenworth county, Kansas Territory. I was present at Lecompton at the opening and counting of the election returns for the election of the 4th of January, 1858, for officers under the Lecompton constitution. I examined the poll-books of Oxford and Shawnee, in Johnson county. At Oxford precinct the poll-books showed seven hundred and thirty-eight names; at Shawnee precinct nine hundred and thirty-six names were recorded on the poll-books.

The tally-papers of both the precincts mentioned above were made out in the same style, and so nearly alike as to induce me to believe that they were made out by the same man.

WILLIAM Y. ROBERTS.

No. 57.

JAMES F. WALKER, being duly sworn, deposes as follows:

I reside in Lecompton, Douglas county, K. T.; am a constable in Lecompton township.

I was at Oxford precinct, in Johnson county, K. T., at the election in said precinct for officers under the Lecompton constitution; went there at the request of United States Marshal Dennis, who promised me protection if I would go there; got there just as the polls opened in the morning. I found Marshall Dennis there with a company of United States troops. The troops were stationed about forty rods from the place of voting, with their arms stacked.

Oxford is in Kansas, just on the Missouri line, adjoining the town of Little Santa Fee; a street divides the towns from each other.

The judges were strangers to me, but I learned that the names of two of them were C. C. Catron and Nonnan; the other I did not learn the name of.

The house where the polls were opened was just across the street from the Missouri line. Catron announced the polls opened, and called upon all persons, no matter where they were from, to come up and vote. There was a rush for the polls by a crowd of men. I got to the polls as soon as I could, but there must have been ten to fifteen votes polled when I got there. I saw one man vote just as I got there; Catron took his vote and said to him "all's right, say nothing." I watched the man and saw him talking with another person, inquiring how the folks were down below. I went to him and asked him where he lived; he told me in Missouri. There was a large crowd of men about the polls when they were first opened, who had come in from Missouri. After they voted they got upon their horses and went back into the State again. Others were coming and going all day; some on horse back and others in wagons.

I challenged three men who offered to vote; they refused to be sworn and left the polls without voting at that time. After I left the polls they came back and voted. I remained at the place where the votes were handed in from 9½ o'clock a. m. until about noon, challenging.

The fourth man that I challenged the judges would not swear, but asked him if he lived in Kansas; he made no reply.

I told them that that was not the question. I wanted to know if he lived in Kansas. He drew a revolver and said, "God damn you, it is none of your business." The judges then asked him if he had a claim in Kansas. I asked him if he then lived or ever had lived in Kansas. He said that he did not, but had a claim here.

Catron said that was sufficient. I asked him to read the governor's proclamation, and showed him one. He refused to read it; and I commenced to read it to him. He said to me, "God damn you, go back to Lecompton and challenge votes there; we can attend to our own business here."

Captain Bledsoe, who was a member of the constitutional convention at Lecompton, came up to me with a revolver in his hand and said to me, "God damn you, you will never live to see Lecompton if you don't get away from here." He asked me if I was going to vote there. I told him that I claimed the right of voting for the State ticket. He replied that I nor no other abolitionist should vote there. I did not vote that day. I saw several free State men come up to vote, but after seeing what was going on went away without voting. I have seen the returns from there since, and there was no free State votes polled. During the time I was at the window, there were only about twelve votes polled. The judges called out repeatedly to have the people come up and vote without any fear. While I was there challenging, the judges would not swear any one who was challenged, but told them if they had a claim in the Territory they were voters; along towards noon the crowd around appeared to be getting drunk; the judges of election had been handed in the second bottle of liquor, and were getting high; they were all making threats against me if I did not leave the window. Some one came up to me and told me that two men were behind me with revolvers and would shoot me if I did not leave. The United States marshal had told me here that I should have protection, and that if I could point out any who voted from Missouri he would arrest them. I went, after leaving the window, to find the marshal; found him behind the house with Jack Thompson, of Lecompton, drinking liquor. I think Thompson was a member of the constitutional convention. I asked him to protect me in challenging illegal voters, and pointed out one man who was from Missouri, who had voted, and asked to have him arrested. He paid no attention to my request to have the man arrested; and said he guessed I could go back; that they were only threatening me, but said it would do no good to challenge, as they would not swear any one that was challenged.

Revolvers had been drawn upon me four different times before I left. I told the marshal this, but he told me that he guessed it was only to threaten me.

I did not go back to the window again, but stood back where I could

see, and saw the judge receiving votes very fast—as fast as they could write down names. I remained there about half an hour afterwards, and then went up to Olatha. Nearly all the men who voted would cross back into Missouri.

I do not think there are to exceed thirty votes in the precinct. I have seen the tally list since the election. I think the vote was seven hundred and ninety-five for the democratic ticket, and none for the free State.

JAS. F. WALKER.

No. 73.

DAVID UPHAM, being sworn, deposes and says:

I was at Oxford precinct, Johnson county, K. T., at the election for officers under the Lecompton constitution, on the 4th of January, 1858; arrived there about five minutes before the polls opened in the morning; were not many persons there when the polls opened. The people would come up to the polls, vote, and cross over into Missouri, where, I understood, they lived. Oxford is on the Missouri line, adjoining the town of Little Santa Fé, in Missouri. Soon after the polls opened, Walker went up to challenge illegal voters. The first man he challenged did not vote, but afterwards the judges refused to swear any one who was challenged. I took a letter from Governor Denver to the United States marshal; do not know what was written in the letter. After the letter was read by the marshal, Mr. Dennis, he said to me that I and the two friends who were with me should be protected if we challenged illegal voters. The United States troops were stationed some three hundred yards from the polls.

The crowd about the polls said that we should not challenge voters, and some of them threatened that if we did not leave they would "blow our damned brains out."

We remained about there until afternoon. I left then. The marshal did not bring his troops near enough to the window to be of any service to us.

The voters, as soon as they had voted, would cross over into Missouri. They were coming and going from there until I left.

I should think that thirty-five was the extent of the legal votes that could be polled at that precinct; am satisfied from what I have seen that that is all the votes that can be polled.

The judges of election took the ground that every person who had a claim in Kansas could vote. I asked a great many who voted what part of the Territory they lived in. They said they lived in Missouri, but had claims in that vicinity.

There are but very few houses in the precinct. The crowd about the polls said that no free State men should vote at that precinct. The character of the crowd was such, and they used such threatening language to us, that we could not consider it safe to remain.

Mr. Walker, who was challenging votes, was told by the judges that it was useless to challenge any one, as they knew whether they were voters or not, and it was useless to ask any questions.

DAVID UPHAM.

No. 65.

ELIAS S. DENNIS, being sworn, deposes and says :

I reside in Leavenworth City, K. T. ; am United States marshal for the Territory.

I was informed by Governor Denver that, with the exception of those at Fort Scott, the United States troops in the Territory would report to me and my deputies, at such precincts in the Territory as I might think advisable to conduct the election of the 4th of January, 1858. I took charge of one company of troops at Oxford ; Captain Barry's company reported to me there on the morning of the election. He was in command of a company of artillery. I reached there about eight o'clock a. m. I can't say that I saw anything that day to deter any *bona fide* resident from voting.

I was about the polls pretty much all day ; did not see any pistols drawn, but in the evening heard that pistols had been drawn during the day ; did not see much of a crowd about the polls at any one time—not more than fifteen or twenty I should think ; I saw a good many come up and vote, and go immediately away—some did not get off from their horses ; after they voted, they would many of them go on the road towards Missouri ; the place of voting was about one-fourth of a mile from the Missouri state line ; I did not know a man who voted there that day ; I had an idea in my own mind as to where the voters came from ; I saw some men cross over from Missouri.

I told the judges of election that I had troops there for the purpose of protecting every man in his right of voting, and that every man should have the right of challenging voters.

There were some men came to me with a letter from Governor Denver. They stated to me that they came for the purpose of challenging voters. I told them that I would protect them in doing so. I heard these men challenge voters. Do not know whether the judges swore those who were challenged or not. They staid there until about noon, and they left. Not many men voted after they left. It was my impression at the time that the challenging did no good ; that it did not prevent any one from voting. I did not challenge any votes. Did not think it was my duty to do so. If any man had voted who I knew was an illegal voter I should have arrested him. I might have had my suspicions as to where some came from, but did not know any man who voted to be a non-resident. Most of those who voted either came up or down the Santa Fe road, which divides Missouri from Kansas. Very few came from a westerly direction. Four-fifths of them came from the Santa Fe road. I had an idea from the men, and from the direction in which they came, that they came from Mis-

souri. When the men voted they generally came in small squads ; only a few at a time voted, and immediately went away. A large majority went in the direction of Westport, Missouri. The portion of country which I passed through was very sparsely settled. I might have seen half a dozen houses in the direction which I came, but not more than that. The country is a prairie country, and a person can see a long distance each side of the road. I did not see any thing that I could call a farm. I have been up and down the precinct, and should think, from what I have seen, that there were not over 75 voters in the precinct. It is in an Indian country. At the town of Oxford there are some ten or twelve houses, I should judge, all told, including shops and stores, and all the buildings there. There is no hotel there.

I think I inquired two or three times during the day how many votes had been polled, but the clerks said they had not numbered the list, and could not tell me. I inquired just before the polls closed in the evening, and told them that I did not care if I could come within fifty of the number, and they could tell that by counting the number of pages written over. One of the clerks commenced counting over the pages, and as he did so, one of the judges stepped between the clerk and the window, before which I was standing, so that I could not see the number of pages. After turning the pages, he replied about 800 votes. I did not ask to see the poll-book myself. There were no votes given in afterwards. The polls closed about that time. I took particular notice, so as to form an opinion as to the number of men who had voted during the day. I supposed there were about 250 votes given in. Am satisfied that it did not differ much from 250. I was satisfied, from the manner of the judges and clerks, that a fraud was intended by them. It was my impression at the time I left that they would return about 800 votes, and I knew if they did there was a great fraud committed. I was in the room some time in the morning, before the polls were opened, and did not see the judges or clerks sworn. Do not know whether they were sworn or not.

The election was conducted differently from any election I ever attended before. Every thing went off very quietly. The persons voting and immediately going away. At the time the polls closed the clerks were writing on the sixth page of the poll-book. I had taken notice during the day, and knew just the number. There were about six names written on the sixth page when the polls closed. I have been shown by the board the poll-books of that precinct for the election on that day ; and counting the pages as they were written on at the close of the election there would have been about 270 names. These poll-books now return 738 names. At the time the polls closed the names on the list were not numbered. I find that, on the poll-book before the board, the names are all numbered. These poll-books give the names of James H. Nonnan, C. C. Catron, and J. L. Ector, as judges of election, and J. D. Conner and J. Hollingsworth as clerks. I think these names are the same as were given me the day of election. There have been names added to the poll-lists since the polls closed that night. I was at Shawnee, in Johnson county, on the night preceding the election of the 4th January. Staid at the

hotel in that place all night. About 4 o'clock on the morning of the election Mr. John D. Henderson arrived there. He told me that he was just from Leavenworth.

ELIAS S. DENNIS.

No. 68.

A. A. Cox, being duly sworn, deposes and says, (February 13:)

I reside at Olatha, Johnson county, Kansas Territory; was appointed by the sheriff of the county to go down to Spring Hill and hold an election, but there were not men enough to open the polls, and we did not hold any election on the 21st December. I was appointed by Pat Cosgrove, who is the sheriff of Johnson county, as his deputy to open the polls at Spring Hill on the 4th of January, 1858, and conduct the election there. I went down. The polls were open when I got there, and they were voting. Mr. Myrick, Mr. Maverty, and Ector were the judges of election.

Spring Hill is situated near the State line. There were some twenty-five or thirty men there during the day. The judges of election were democrats. The vote stood twenty-four free State and six democratic. The judges gave me the poll-books, but I lost them between there and Olatha. I was to deliver the poll-books to the sheriff. The judges did not tell me to give them to any one. I should have given them to the probate judge if he had been there, but as he was not I should have given them to the sheriff. I never made any returns, nor certified to General Calhoun that the poll-books were lost.

I have been at Oxford, but never was there at an election; should think it was settled more about Oxford than about Spring Hill. I think Mr. Ector was one of the judges of the election on the 4th of January at Oxford. I heard Ector say that the vote was a legal one at Oxford precinct. It was considered that a man who lived in the Territory on election day was a voter. I think that Oxford and Shawnee villages are about the same size. I suppose there are some six or eight houses occupied between Olatha and Oxford. The country is a prairie country, and a person can see four or five miles from the road. The distance is twelve miles. I should think there were not more than fifteen voters living in Oxford. The place is not as large as Olatha. There are some fifty in Olatha. I came from Kansas City, Mo., to Johnson county, some time last summer. I came from South Carolina to Kansas City. I know William Fisher, jr., of Kansas city; he is a merchant there. I saw him at Olatha on the 21st December; did not see him vote. I came from Spring Hill to Olatha, which place I reached late in the afternoon. Mr. Fisher and Mr. Thatcher were just leaving when I got there. There must be in the neighborhood of twelve or fifteen men in Oxford who are voters; do not know how many votes were polled at Oxford on the 21st of December. I understood that there was a pretty good vote. I have just been shown the

poll-books of that precinct by the board, and find the names of 1,266 voters recorded. This is the poll-book of December 21, 1857. I have carefully examined the poll-books from beginning to end. I find in this poll-book only names of four persons that I know. These names are: Batt Jones, J. H. Nonnan, Peter Cosgrove, and J. B. Flanagan. Among all the other names there is not the name of any person that I ever knew or heard of before that I now recollect.

A. A. COX.

Recalled. At the election held on January 4, 1858, I was a candidate for the State legislature, under the Lecompton constitution, for the county of Johnson, Kansas Territory. I was put in nomination by the democratic party of that county. I canvassed the county before the election. I went to Oxford to make a speech, but when I arrived there it was late in the afternoon; did not get an audience, and did not speak. I made one speech only, and that was at Monticello.

I think the true vote of the county would be about five or six hundred. I have never been able to account for the very large vote heretofore given in that county.

A. A. COX.

No. 70.

B. F. DARA, being sworn, deposes and says:

I reside in Olatha, Johnson county, K. T. I have lived in that voting precinct nine months.

I know some people in Oxford precinct. I should think that there were some forty or fifty voters living in that precinct; not more than that. I was there on the 4th of January, at the election for State officers under the Lecompton constitution; reached there early in the morning, just as the polls opened. There were some 150 or 200 men there. Mr. Walker, of Lecompton, came there soon after; I saw him challenge a man who attempted to vote. I think the judges did not swear him; if they did the man voted. Walker was asked if he was going to stay there all day to challenge. He said that he did not know whether he should or not; that he had a right to do so, as every other American citizen had, if he saw fit to.

I have been told that there are ten free State men there, and that the balance are democrats, or pro-slavery.

Walker challenged half a dozen or more who offered to vote; did not see any one sworn by the judges. The persons challenged all voted. I saw Mr. Bledsoe and two or three others draw pistols, with the apparent intention of driving Mr. Walker from the polls, to keep him from challenging.

I did not know but few of the people I saw there. I knew Batt. Jones, Captain Bledsoe, Ector, and Catron.

Batt. Jones, Mr. Ector, and Bledsoe boarded on the McKinney

farm, in Missouri. Ector and Catron were judges of the election. I left there about 11 o'clock a. m. I should judge that up to that time there were 40 votes polled. I think that the judges returned 795 votes during the day ; have never seen the official returns.

Oxford is situated on the Missouri State line. Most of the men that I saw coming into Oxford came from Missouri. Some came on horse-back, some in wagons, and some on foot. I have been down in Missouri since election ; heard men say that their friends were at Oxford on election day to vote, and wanted them to go. Captain Bledsoe said that "no free State man ought to be allowed to vote, and he would be damned if they should vote there."

Captain Bell, who was one of the clerks at Olatha, on the 21st December, told me that William Fisher and Thatcher, of Westport, came to the window and voted, and said that they had voted twenty times at Shawnee. They made this statement after they had voted, and said they would vote as many times again before night.

B. F. DARE.

Delaware Agency.

1 Grinter.....	1	7 Franklin	6
2 Munday.....	3	8 Cole	10
3 Henderson.....	2	9 Munday, recalled	8
4 Noteware	4	10 Grinter, recalled	9
5 Miller	5	11 L. S. Boling.....	11
6 Deifendorf.....	7	12 Thomas Ewing, jr	12

No. 21.

JAMES C. GRINTER sworn, (January 21.)

I was at Delaware Agency, in Leavenworth county, Kansas Territory, at the election held there on the 4th of January, A. D. 1858 ; was one of the judges of election. Delaware Agency is on the Kansas river, and within the Delaware Indian reservation. Theodore Garrett and Isaac Munday were the other judges. The clerks of election were William Wilson and James Findlay. We opened the polls between 9 and 10 o'clock a. m.; closed them about sunset. There were forty-three votes cast on that day. There was one person who tried to vote twice, but the judges would not permit him ; do not recollect his name.

I do not know of any person voting on that day whom I knew to be a non-resident. Did not know every man who voted.

I examined the poll list after the polls closed, and there were but forty-three votes polled. Signed the poll-books immediately after the polls closed. Signed them just below the certificate. The certificate was written just below the list of names, and so that no names could

be added above the certificate. I screwed up the ballot-box. It had been used before as a money-box.

Mr. Garrett gave the box and poll-books to a man by the name of Henderson, to take away. The man was there when the polls closed, and took it away with him. He had been there three or four hours. I do not know his first name. He was a tall, spare man, with sandy beard.

Mr. Garrett took the other copy of the poll-books. Have not seen a copy since.

Major Robinson was there; spoke of Henderson and knew him; was the only man there who appeared to know Henderson.

I have lived at that place about nine years, or within one mile of there; am well acquainted with that section of country. The place is just a mile from the Wyandott lands; is eight miles above the mouth of the Kansas river. Henderson was with a buggy. There was no person with him.

I suppose there must be fifty *bona fide* settlers in that precinct. I understood that Henderson was to bring the ballot-box and poll-books to Leavenworth city, and was to give them to the commissioners appointed by John Calhoun, (president of the Lecompton convention.) The poll-books were made out upon three sheets of paper, wafered one upon the other, and signed at the bottom of the third sheet. The third sheet had some names upon it. They were all numbered, and the number 43 was upon the third sheet and opposite the last name. There was but one kind of ticket polled; the democratic was the only one used. We certified to so many tickets having been polled. We did not open the ballot-box or count the votes. There was but one ticket used, and as Mr. Garrett said he would be qualified that there were but 43 votes in the box, and they all democratic votes, we did not deem it necessary to count them. We just certified that they were all of the regular democratic ticket. I voted that ticket myself, as did also the other judges. We did not seal up the poll-list; just rolled them up, put them into the ballot-box, and screwed down the cover. The handwriting on the poll-list and certificate was that of James Findlay. Mr. Findlay acted as clerk, but did not vote. He resides in Westport, Missouri.

JAMES C. GRINTER.

No. 32.

ISAAC MUNDAY, being duly sworn, deposes and says, (January 26:)

I reside at Delaware Crossing, Kansas Territory; was there at the election on the 4th of January, 1858; have resided there about thirteen years; was one of the judges of the election there on the 4th of January for the election for State officers and members of the legislature. The polls were opened about ten o'clock a. m., and closed about six o'clock p. m. There were 43 votes polled on that day. Mr. Garrett, one of the judges, took possession of the poll-books after they were

signed. I did not see what he did with them. I told Mr. Garrett that I would leave it with him to take care of them. The ballot-box was about ten inches square. It was marked on the outside with figures, showing it to have been a money-box. It was fastened together with screws. The poll-list was kept on three pieces of paper fastened one upon the other with wafers, and the certificate was made out upon the third sheet just below the list of names. I saw Mr. Henderson there late in the evening. He stated that, as he was coming up to Leavenworth, he would bring the returns up, as the citizens there would be anxious to learn the result. He did not ask me the number of votes polled. I think there are at least fifty voters in the precinct.

ISAAC MUNDAY.

No. 28.

JOHN D. HENDERSON, being called, affirms, (January 25 :)

I consider my home in Leavenworth City. I left this place for Shawnee, in Johnson county, on Sunday evening, the 3d instant; reached there on the morning of the 4th, about 4 o'clock. I went there for the purpose of seeing some friends relative to getting some one appointed postmaster at Monticello. I also carried a letter to some one at Shawnee; do not remember who the letter was directed to. Colonel Isaacks gave it to me. I left there after dinner; probably 2 or 3 o'clock. I am special mail agent for the purpose of inquiring into the delays of the mails from St. Louis to Leavenworth City; was appointed December 8, 1857; was in Washington at the time of my appointment. I should suppose that there were some 200 or 250 persons in Shawnee while I was there; men were going and coming continually; do not know whether they were missionaries, or citizens, or what. I do not think the population of the town would go over 200; how the settlements are in the country around there I do not know. It was not thickly settled where I went. I was at the polls during the day; was there twice, I suppose half an hour each time. Voting was going on rapidly while I was there. I voted there. I saw Colonel Titus there; did not see him vote. I saw men there who were drunk, and making threats against men who should offer to challenge them. I crossed from there to Delaware Crossing; got there about sunset. The polls were opened when I got there; stayed until they closed. The judges of election were Mr. Grinter, Mr. Munday, and Mr. Garrett; neither of the judges announced to me the result of the election.

Frank Robinson, Indian agent, asked me after the polls closed if I was going up to Leavenworth; I told him yes, and remarked to him if the vote was closed I would take it to the proper officer; that there would be some anxiety by citizens to know how the vote stood. Some one remarked that it was the intention to take them to Wyandott and have them sent from there to Leavenworth, but as I was going up, it

would be advisable to send them by me to the county commissioners. Diefendorf, I suppose, was the principal one, and he was the man I was to take them to. I remarked to them to have them in a box properly fixed, and I would take pleasure in carrying them; went down to take tea with Mr. Munday; told them that I would stop for the box as I passed by the store on my way up. After taking supper and waiting until the moon rose, a box was handed me said to contain the returns. The judges were all gone; I suppose it was one of the clerks who handed it to me; I saw a box which looked exactly like the one handed me in the room where the judges were; it was used there as a ballot box; the box was about ten inches square, and eight inches high; was marked on the outside \$25,000; suppose it had been used as a money box; I saw the returns rolled up, and supposed they were put in the box; I did not learn what the vote was; I saw when I left there a crowd around; suppose that the vote could not have been more than 150 or 200 from what I saw; I did not inquire of the officers nor did I learn what the real vote was. On my coming to the store after the moon arose, a box was handed me, the lid of which was fastened on with screws; I carried it to Leavenworth; I suppose it contained the returns; I gave it to Mr. Oliver Diefendorf; did not open it while going there, nor have I seen it since; I gave it to him; my reasons for giving it to him was, that he was commissioner, and I believed was the proper person to give it to, and believe so yet. Mr. Diefendorf, I believe to have been appointed by John Calhoun, and believe he is a brother-in-law of Calhoun. I left Delaware Crossing after the moon arose some time—I suppose between 11 and 12 o'clock; reached here before dinner; did not say to any one before I saw Mr. Diefendorf that I had the returns; gave them to him about noon of the 5th, about an hour after I reached here; I told him that there was a box with the returns in in No. 27, at the Planter's House, and he could get them there. I have seen Mr. Diefendorf since I gave the box to him; he did not state to me what the returns were; I asked him, but he did not tell me; do not remember at what time I asked him, nor do I remember what reply he made. The morning I started I asked him if he had sent them to Calhoun; he told me that he had. This was six days after he had delivered the returns to him. I have written to Calhoun in regard to the returns since then, but have received no answer. The letter stated to him to see that a full and fair investigation was had before he opened the returns, and that in case returns did not come from certain precincts the oaths of judges should be taken in evidence as to what the returns were; I mentioned Delaware Crossing precinct only. I wrote another letter to him since, but nothing in regard to the returns from Delaware Crossing; not to the best of my knowledge. I do not now know where Mr. Diefendorf or General Calhoun are; I saw Calhoun on Saturday last at Platte City, Missouri; I told him I was coming before this board; I asked him if the returns from Delaware Crossing were made out, and asked him what they were. He did not reply; other persons were talking to him at the same time. I believe Calhoun is surveyor general of Kansas Territory; do not know what his business was at Platte City; do not think his official duties would

lead him there; I got no satisfactory reply to my question to Calhoun. In my letter to Calhoun from Lawrence to Fort Leavenworth, I requested him to give a statement of the returns from the other precincts in Leavenworth county, and to say that he would receive the oaths of the judges at Delaware Crossing, as to what the vote was at that precinct; I told him that that would satisfy the public mind on the subject. I received no answer from him to my letter. Governor J. W. Denver made the same request to Calhoun that I did, to the best of my belief; I saw a letter written by Denver to Calhoun, and believe that that was his request. If Calhoun has complied with that request I do not know it; I think that Calhoun stated to me at Platte City, on Saturday last, that he had not announced the result of the election. I have been told by some that if I came to Leavenworth to testify I could not get justice, but would be mobbed if I came over from Missouri to Leavenworth; my reply was, mob or no mob, I am going any how. No man has advised me not to come who is fearful of the result of my testimony; but those who did, I believe did it upon the ground that I could not be safe in my person while here; Calhoun did not advise me not to come; I saw Diefendorf in Platte City in company with Calhoun; I did not write to any one except Calhoun in regard to the returns from Delaware Crossing, to the best of my belief. My object in going to Platte City was to enable me to vindicate myself from any suspicion in regard to the returns from Delaware Crossing. I wished to get Mr. Diefendorf to come with me; he said he would be here in a few days; do not remember of writing to any one in this place while in Lawrence, except Calhoun; have not seen the returns or anything purporting to be the returns from Delaware Crossing since I saw the judges of election have them at that precinct; I stated at Lawrence that if I could get over here and see some one who would see Calhoun I could get him to accede to the proposition of Governor Denver; I do not remember of having written to Mr. Clarkson or Mr. Miller while at Lawrence.

J. D. HENDERSON.

No. 36.

J. H. NOTEWARE, being sworn, deposes as follows, (January 26:)

I went from Lawrence to Leecompton on the day that the returns for the election on the 4th of January, 1858, were to be opened and counted there. I saw John D. Henderson at Lawrence before I started; Mr. Henderson was then under arrest at Lawrence, charged with altering the election returns of Delaware Crossing precinct.

Henderson sent a message by me to John Calhoun not to count the votes of that precinct until he (Henderson) could see Calhoun. Henderson was very urgent that I should see Calhoun, and wished me to carry a letter to him; was quite anxious to go himself. He also requested me to see Governor Denver in his behalf, and request him to urge Calhoun not to open the returns of that precinct until he

had seen him (Calhoun.) I understood from Judge Smith, who was in the room when the returns were opened by Mr. Calhoun, that the returns from all other precincts in Leavenworth county were opened and counted, except those from Delaware Crossing; these, he stated, had not been received, and that he should hold the matter open until he had heard from that precinct before he declared the vote of that county.

J. H. NOTEWARE.

No. 38.

A. B. MILLER, being duly sworn, deposes and says, (January 28:)

I reside in Leavenworth City, Kansas Territory; came here with my family two years ago next March. I was in this place on the 4th of January, 1858; voted here on that day; was not out of town during the day. I know no man by the name of A. B. Miller in Leavenworth county besides myself; have been shown a copy of the election returns of Delaware precinct, Leavenworth county, K. T., for the election held there on the 4th of January, 1858. I find my name appearing on that list. I did not vote there, nor was I in Delaware on that day. I was about the polls but very little in Leavenworth on the 4th of January; saw nothing fraudulent in the conducting of that election. I have never seen the returns from any precinct in this county for the election held on the 4th of January, 1858; have never seen a ballot-box purporting to contain the election returns from Delaware Crossing. I have seen General Calhoun at Weston, in Missouri; saw him there on Thursday or Friday of last week. The question was asked him in my presence what the real vote of Delaware Crossing was. He told me he had not received the returns from there. I saw Mr. Diefendorf, who was one of the commissioners of this county to receive the votes, at the same hotel with Calhoun. I have heard Diefendorf say that he was a brother-in-law of Calhoun. I went over to Weston to see Calhoun in regard to the result of the election, and stated to him that Mr. Ewing wanted me to ask him if he would take the affidavits of the judges of election as evidence as to what the real vote of Delaware Crossing was. He said that he had offered to take their affidavits, but would not take it when they were under duress, and said that the result of Leavenworth county would decide the matter as to which party had carried the Territory. I understood that if the vote of Delaware Crossing was only forty-three, the free State party would have a majority in both branches of the legislature; but if the vote of that precinct was several hundred, the democrats would have a majority in both branches of the legislature. I do not recollect that General Calhoun said that he had made any effort to get those returns. I went to see if I could get anything done to get Mr. Henderson released. I had written a letter to Mr. Henderson by Mr. Dennis, stating to him that if he could release himself by making an affidavit setting forth the facts in relation to the Delaware Crossing returns to do so, and that the men whom he was serving would not turn upon them.

heels to save him ; that they were then safe in Missouri. I have had no conversation with Henderson since the election in relation to those returns. I saw Mr. Diefendorf at Weston and asked him what he was doing there. He said he had something to do with the election as commissioner, or something of that kind, and he did not wish to be arrested. I do not know of those returns ever having been in Leavenworth. I asked Calhoun what he was going to do in relation to declaring the result of the election. He replied that he was not going to issue any certificate until he knew whether or not Kansas was admitted under the Lecompton constitution. He stated, then, that he was going to Washington the next day ; did not say why he had gone out of the Territory ; heard him say that there was some process of law served upon him at Lecompton, and that he was relieved by a writ of habeas corpus ; did not learn why it was served upon him, but from what I could learn I supposed it was something in reference to Henderson. He had been at Weston several days. Judge Cato was with him. Cato said he had been there a week, waiting for Calhoun to get ready to go to Washington. Judge Cato is the judge of the district in which Lecompton is situated. I understood from Jack Thompson that he was appointed to serve the writ of habeas corpus upon Calhoun, and take him before Judge Cato. He did not state where the trial was held, or whether or not any trial was held ; said that Calhoun was released from the process served upon him at Lecompton by the writ of habeas corpus.

A. B. MILLER.

No. 47.

OLIVER DIEFENDORF, being called, affirms as follows, (February 2:)

I reside in Leavenworth City, Leavenworth county, Kansas Territory ; am a lawyer by profession ; am a brother-in-law of John Calhoun ; was at Leavenworth on the evening before the election of the 4th January, 1858 ; was stopping at the Planters' House in that place ; I presume I was in Calhoun's room that evening ; I saw Mr. Marshall, Colonel Clarkson, Major Miller, Major Boling and Mr. Henderson, at the Planters' House frequently about that time, but do not remember of meeting them on that evening ; I have never heard of a letter having been written and signed by any of the above named gentlemen until I read it in the testimony given in by Henderson before this board, or heard of it from Mr. Franklin, subsequently to his testifying ; my room at the Planters' House was nearly opposite the room occupied by Calhoun ; I could not have been in his room more than twenty minutes during that evening ; it is possible that I met the gentlemen whose names I have mentioned above in his room, but if I did I cannot now call it to mind. I heard nothing about Mr. Henderson's going to Shawnee until the day following ; I wished to see him on business, and inquired of some one—I think it was Mr. Miller—if he had seen Henderson ; I then learned that he had gone there ; I did not learn that any person was going to Johnson county or to Delaware

Crossing, or that any letter or message had been sent down. The first I saw of Mr. Henderson after the election was on the day following; he was then lying down in room No. 27; it was soon after breakfast; he told me that he had returned sometime during the night on Monday the week following the election; Mr. Henderson sent William Calhoun (nephew of John Calhoun,) to my office about nine o'clock p. m., saying that he (Henderson) wanted to see me; I went over to the Planters' House, inquired for his room, and went to it; he told me that he intended to go away that night, and handed me a roll of papers, which he said was the returns of the Delaware Agency precinct; I received it from him; he then told me that there was a box in room 27, I think, which I understood contained the ballots of the same precinct; I told him that I did not want that as I had no means of sending it. This precinct is commonly called Delaware Crossing, but is legally designated Delaware Agency. I took the poll-books that night from him; the next morning I rolled them up in a wrapper, sealed them with sealing wax and directed it to the president of the convention at Lecompton, and took it to the post office with the intention of sending it by mail, but on reaching the office I found that the mail was put up, and that I could not send it by mail on that day; I kept them with the intention of sending by the next mail, which would leave on Thursday morning following, but in the mean time heard that Calhoun would be over to the fort on Thursday or Friday of that week; I understood that he arrived there on Saturday morning, and was making preparations to go up and deliver him the returns, when I heard that he had gone to Weston, Missouri; on Sunday I went to Weston, found Calhoun there; I delivered him the returns, I think, on Monday or Tuesday; I had been asked several times previous to this what the vote of Delaware Agency was, but never knew, except as rumor gave it; I had heard that the returns had been altered in some way; Henderson did not tell me on the day following his return that he had brought up the returns from Delaware Agency, but I heard from some source, and it may have been from him prior to his delivering them to me, that the judges had sent them up by him. The judges of election for Kickapoo, Easton, Todds, and Delaware City precincts sent their returns to me. I sent them by mail to Mr. Calhoun at Lecompton. Mr. Thompson, one of the commissioners, told me that the judges at Connell's precinct had adjourned to Kickapoo. The paper which Henderson handed me was rolled up, but not sealed. He had told me that he was going away that night. I had previously heard it reported that if he started he would be arrested, and told him if this was the case he had better not go—that he had better stay and be arrested there than be arrested on the way. I did not know at that time what he was to be arrested for. Had no conversation with him relative to the manner in which he had come into the possession of the returns. I had heard that the returns had been altered, but had not heard that Henderson was charged with making the alterations. I never saw a figure or letter upon any return from any precinct in the county for either the election of the 21st of December or the election of the 4th of January, except the returns from Todd's precinct, for the vote

upon the constitution on the 21st December, unless it was upon the outside of the returns as handed me. The papers were never unrolled from the time Henderson gave them to me until I put them into the hands of General Calhoun, and I have now no knowledge of what the vote is except as rumor variously states it. I had no conversation with Calhoun in regard to it, except as I handed him the roll I said to him: "Here are the returns from Delaware Agency, handed to me by Mr. Henderson." I should judge from the size of the roll there must have been three or four pages of cap paper, and from the manner in which they were rolled that they were fastened one upon the end of the other. There was no writing upon that portion of the paper which I saw. I have had no conversation with Calhoun or Henderson in relation to those returns or the vote at that precinct, except the conversation herein stated. Calhoun came over from Leecompton to Leavenworth before the election of the 21st December, and remained there until after the election of the 4th of January. Messrs. Marshall, Clarkson, Henderson, Boling, Isaacks, Franklin, and myself were in the habit of going into Calhoun's room frequently. I do not know that I ever met them all there at one time; when there the subject of conversation usually turned upon political matters. I know of no person having been sent on political matters to other parts of the Territory, except Mr. Henderson going to Johnson county, and did not know of that until the day. I presumed that he had gone there on matters connected with the election, but was not told the object of his mission. I have heard Calhoun say, prior to the election, that "he thought the democratic party would be successful," but have heard no statement made by him since the election as to which party had succeeded. I have had very little conversation with him on political matters since the election or before. Calhoun went to Weston, as I was informed, on Saturday, the 16th of January; I saw him there the day afterwards. He remained there until the Saturday following; he then started for Platte City, stayed there all night, and left on Sunday for Springfield, Illinois, and Washington, D. C. I went with him as far as Liberty, Missouri, and left him there on Monday morning. I have not heard of his being in the Territory since the 16th of January. Should have been likely to have known it if he had been there. I have never heard him state what the result of the election was; never had any conversation with him in regard to it. I have heard, but not from him, that if the constitution was defeated, he would not issue certificates to any one; do not remember who told me this. I understood from him, while at Liberty, that he would be back in four or five weeks. I have seen a paper from Leavenworth containing a printed statement of Henderson's evidence as given before the board; have had no conversation with him since. Read his testimony in relation to the statements there made that he had told me the day after he had returned from Delaware Agency that the poll-books were in a box in room No. 27. I did not have any such conversation with him on that morning. He told me on the Monday night following, at the time he gave me the roll purporting to be the return, that I would find the box in that room. Room No. 27 was the room in which General Calhoun and Mr. Martin of Washington, D. C., and some

other gentlemen were in the habit of meeting in, and was used by Calhoun and Martin as a sleeping room. I saw Henderson on the morning that he left Leavenworth, as he was getting into the stage to start; I did not tell him that I had sent the returns to Calhoun. I do not know what Mr. Calhoun's business was at Leavenworth before the 4th of January; do not know of his having done any business there; do not know the business of Marshall or Boling there. The general topic of conversation at that time was in relation to political matters. The judges of election were appointed by the commissioners; Marion Todd, Mr. Thompson, and myself were the commissioners for Leavenworth county. The judges appointed, I believe, belonged to the democratic party. Mr. Carr and Mr. Mathias left some eight or ten days before the election for the southern part of the Territory; my understanding was that they had gone on a canvassing tour. Do not know whether Mr. Calhoun went down to Johnson county before the election of the 21st of December or not. I was well acquainted with Mr. Henderson have known him for about one year. The morning of the 5th of January was the first time I saw Henderson after his return from Delaware Agency; I had just returned from breakfast; General Calhoun was at the breakfast table when I left; the only conversation I had with Henderson at that time was to ask him when he returned; he gave me to understand that it was some time in the night; I was asked time after time by different persons on the street what the vote of Leavenworth county was, but I could not state what it was except from rumor; had not examined the returns; the returns from Kickapoo, Easton, and Todd's precincts were received by me on the 5th; I knew that Henderson had returned from Delaware Crossing, but did not inquire of him the number of votes polled there; my impression is that it was on Tuesday the 5th that I heard Henderson had brought up those returns; he boarded at the same hotel with me; he did not occupy room No. 27; I think his room was on the upper floor; he remained at the hotel a week after his return from Delaware Agency; during that time I did not inquire of him the number of votes polled there; my reason for not doing so was that on about the 7th I learned from some one—I think Mr. Shotwell—that the returns had been altered by placing another figure after 43, making it 430; I frequently heard it spoken of by others about this time that fraud had been committed; during the time that Henderson remained at the Planter's Hotel after his return from Delaware Agency I was in Calhoun's room frequently; never saw any box there in either Calhoun's or Henderson's room; Mr. Henderson gave me a roll of papers on Monday night about 9 o'clock, the 11th of January, which he said were the returns from Delaware Agency; the roll shown me here by this board are the same papers which he handed me at that time; I kept them in my possession seven days, and then gave them to Calhoun at Weston, Missouri; I heard of Henderson's arrest on the same day that he was arrested, on Tuesday the 12th January; I went to Weston on the 17th of January, and remained until the 30th in Missouri; some few days after, and the same week of the arrest of Henderson, I heard in Leavenworth that one of the judges of election at Delaware Agency had come to

Leavenworth City to learn whether or not there was a warrant out for him; I think I made no statement that he had better not say that Henderson brought away the poll-books; at this time the poll-books of that precinct were in my possession; I don't think that there was any conversation had in relation to the judges having said that Henderson had the poll-books; I saw Calhoun I think every day, from the time I reached Weston on the 17th until I left him at Liberty on the 26th January on his way to Washington. I do not know of his leaving the State of Missouri during that time, and I should have been likely to have known it if he had gone. I heard, prior to giving him the returns of Delaware Agency at Weston, that he had counted the votes at Lecompton. I never saw the poll-books after I gave them to him at Weston until they were shown me here by this board. I do not know how they got to Lecompton; do not know of any messenger having been sent by him to Lecompton. I never heard him state, after the count of Lecompton, where the ballots or poll-books were. I recognize these poll-books of Delaware Agency, as shown me by this board, as the same papers which I gave Calhoun at Weston on the 18th or 19th of January last; I recognize them as the same papers by a spot of ink on the outside of the roll. I have examined the papers and find them figured up to represent three hundred and seventy-nine votes, and the handwriting appears to be all of one person. This is the first time I have ever seen the contents of the poll-books. The list is made out on seven pages and a half, wafered together one upon the end of the other. The head of the certificate is about three-fourths of a page from the last name on the list, leaving a blank between the certificate and the last name. The certificate is made out on a half sheet, and the paper appears to have been cut above the top of the certificate. The last half sheet on the list does not contain any names of voters, nothing but the certificates and signatures of the judges. There is plenty of room on the seventh sheet, below the last name on the list, to make out the certificate of the judges without attaching another portion of a sheet. The names are written in two columns on the list with lines ruled between the columns of names and numbered on the left of each name. I do not know the handwriting in which the list is made out. The words Delaware Agency, as appearing in the heading and in the certificate, are in a different colored ink from the balance of the certificate and heading, and appears irregular in the heading.

OLIVER DIEFENDORF.

No. 39.

B. J. FRANKLIN, being duly sworn, deposes as follows, (January 28 :)
I reside in Leavenworth City, Leavenworth county, Kansas Territory; was there on the 4th day of January, 1858; voted at that place on that day; saw nothing at the election on the part of the judges of election calculated to defraud the will of the people; saw a great

many people here who were strangers to me ; challenged some ; they swore in their votes ; I thought the vote was greater than the city could poll legally ; do not know of any man's voting who was a non-resident of the Territory. I was inside of the room where the polls were held some portion of the time ; had the privilege of staying inside of the room all the time if I chose ; I was a candidate on the democratic ticket for member of the State senate. The judges of election were Colonel Clarkson, Daniel Scully, and L. W. Jones ; the judges I understood to be all in favor of the democratic ticket ; believe they all voted that ticket. I remained in Leavenworth the greater part of the time from the day of election until the 15th of January. Oliver Diefendorf and Marion Todd are two of the commissioners appointed by General Calhoun to receive the returns for the election held in this county on the 21st of December, 1857, and 4th of January, 1858 ; I do not remember the name of the other commissioner. I am well acquainted with Diefendorf ; our offices are adjoining each other. I found Mr. Diefendorf in western Missouri on Monday, the 17th of January ; I understood that he had not been there but a day or two at that time ; am in the habit of visiting Mr. Diefendorf's office frequently ; did not see any election returns which had come into his possession since the 4th of January ; have seen no election returns or poll-books from any precinct in Leavenworth county, except the poll-books of Leavenworth precinct, and only saw those while they were in the hands of the judges on the day of election. I felt an interest in the election as a candidate on the democratic ticket ; I felt an interest in the success of that party ; cannot state whether I inquired of Mr. Diefendorf the result of the election in this county or not. It is very probable I did, but if I did I did not receive any satisfactory answer whether or not I was elected ; I was always under the impression that the democratic ticket was successful, but that impression was not confirmed by the answer of Mr. Diefendorf ; do not know that he told me the result of any particular precinct. Diefendorf was to make his returns to John Calhoun ; I do not know whether or not the commissioners have a right to open the returns or send them to Calhoun sealed. I understood that Calhoun had never received the returns from Delaware Crossing at the time that he counted the balance of the returns at Leecompton. I think I received this information from Mr. Diefendorf ; I think I heard this from Diefendorf at Weston, and it is very probable that I heard it several times before I saw him there ; I understood from Diefendorf that the returns of Delaware Crossing had been in his possession subsequent to the arrest of Mr. Henderson ; do not know how long they were in his possession, nor do not know where they are now ; heard that Mr. Henderson had been arrested under a law in relation to election frauds concerning the returns from Delaware Crossing ; understood from Mr. Clarkson that he had received a message from Henderson to that effect ; I think it is very probable that I had heard something about the election there prior to the arrest of Henderson, but did not learn the number of votes polled ; I asked Mr. Henderson, prior to his arrest, what the vote at Delaware Crossing was ; from what I understood from him I suppose that the vote was

sufficient to insure the election of the democratic ticket ; I did not then know the result in the other precincts of the county ; I thought that the result depended upon the vote at Delaware Crossing ; that aside from that precinct the vote was very close, according to my belief then ; I do not distinctly remember the reply of Mr. Henderson to my question regarding the vote of Delaware Crossing. The answer was sufficient to induce me to believe that he knew something about the number of votes polled there, but I do not know exactly his answer. He did not state to me what he had done with the poll-books ; do not know that he had had them ; I inquired of him the result because I heard that he was going to Delaware Crossing. I learned on the night of the 3d of January, at the Planter's Hotel, that Henderson was going to Delaware Crossing ; General Calhoun, F. J. Marshall, the nominee for governor, J. P. Carr, Major Miller, Colonel Clarkson, Major Boling, and myself were present at the time. We were all, in number twenty-seven, at the Planter's Hotel. I cannot state the exact time we were in there—probably we were there two hours ; I did not see Henderson start ; saw him making preparations to go. The subject of conversation was in relation to the election to come off the next day ; I do not think that any one suggested to Henderson the idea of going to Delaware Crossing ; before he proposed himself to go. It is very probable that it was suggested to Henderson to see that a polls should be opened at Delaware Crossing, as there was none held there on the 21st of December. It was generally understood by all present that Henderson should go to Delaware Crossing the next day. I understood that he was also going to Johnson county. Col. Isaacks was in the room. It is more than likely that Mr. Diefendorf was also there. It is my impression that he was in the room some time during the evening. One of the purposes that I understood Henderson was to go for was to convey a letter to Johnson county. There were democrats in the room, and the letter was written by a democrat, and written to a democrat. He went on no other political business than to carry the letter that I know of. He might have had other business, and I have no knowledge of it. Some one who was present in the room wrote the letter. I do not know that I can say who wrote it. I saw it on the table in number 27, which was General Calhoun's room. My name was signed at the bottom of the letter. Colonel Isaacks also signed it. I cannot say that Calhoun signed it ; it is my impression that he did not. The letter was lying on the table when I signed it. Some four or five names were signed to it. It is probable that I was requested to sign it. I think I saw the letter written, but cannot say that I distinctly recollect who penned it. General Calhoun was present at time it was written—that is my impression. It is my impression that there was some conversation in regard to the contents of the letter in Mr. Calhoun's presence. I think the letter was directed to Mr. J. H. Danforth. As far as I was concerned I was willing that the letter should be read by leading democrats in that section of country ; could not go into details and give you everything in it. The substance of the letter was that as many democratic votes should be polled at Delaware Crossing as could be legally ; and that the democrats should exert themselves

to get out as full a vote as possible. I will not swear that the letter did not state that any particular number of votes was expected to be polled there. I will not state that the letter did not state any specific number, nor that it did. I think the letter was about one page long. I have given you the substance of the letter—all that I distinctly recollect. I would not swear that the word legal was used in the letter. It was my understanding that there was not to be any made up returns, except such votes as were actually polled. I think I understood from Colonel Isaacks that Mr. Henderson brought the letter back to him. I cannot state whether anything in the letter stated that it should be returned or not. I do not know why it was returned. Do not know whether or not it had been opened. Do not know if it was sealed when Henderson took it. Have not seen it since it was brought back. I have been in company with several of the gentlemen who were in the room on the night of the 3d since. Have seen Colonel Isaacks in Weston since election. Have seen Diefendorf there also with Calhoun. Have not held any conversation with those gentlemen in reference to that letter since election, except that concerning Henderson's bringing it to Isaacks. I asked Calhoun at Weston, some time between the 15th and 20th of January, if the Delaware Crossing returns were counted at Lecompton. He replied that they were not in his possession at that time. He did not tell me where they were. Did not tell me that he knew where they were, nor did not state that he had made any inquiry where they were. I saw Mr. Henderson on his horse when he was leaving here. Had no conversation with him. Saw Henderson at Weston on Saturday evening, but saw him standing in front of the St. George hotel. Calhoun was stopping at that hotel. Did not see him while Henderson was there that I know of. Saw him on Friday at Weston. I do not know that Calhoun knows where those returns are. I have asked Diefendorf in relation to the returns of the Delaware Crossing. He stated that he had not returned them to Calhoun. It was my impression that he still held them in his possession. He did not give me any reason why he had not returned them, that I know of. I cannot state distinctly whether I asked him why he had not returned them or not. It is very probable that I did. I have never received any official information whether I was elected or not. Do not know whether I asked Calhoun whether I was elected or not. I do not recollect of asking either Calhoun or Diefendorf the number of votes cast at Delaware Crossing. If I did, I did not receive any satisfactory reply. I have seen Mr. Diefendorf and Calhoun together in Weston frequently since the election. Do not now recollect of ever stating to Calhoun that Diefendorf had those returns. Do not know that Calhoun knew that he had them. It was my impression that Mr. J. H. Danforth lives in Johnson country. He was a delegate to the convention from that county, and I believe he lives there. The letter to him suggested that he should see that the precinct at Delaware Crossing should all turn out, and that all their votes should be polled. The letter suggested to him that a large vote should be polled there. It did not state where the voters were to come from. It was my understanding that the votes should come from Delaware Crossing. Mr.

Danforth is a leading democrat in the section of country where he lives. I do not know that he belongs to any organization with power to get voters to go from one section of country to another. I do not recollect who went into the room at the hotel on the night of the 3d with me. General Calhoun was acquainted with Danforth, so was Colonel Isaacks and myself. I met Danforth at Lecompton the only time I ever saw him. I do not know of any secret organization now existing among the democratic party ; do not know of any organization which has for its object the advancement of any party now existing. I do not recollect that Mr. Danforth ever told me that he lived in Westport, Missouri. Mr. Henderson has never said to me how he succeeded in getting a vote polled at Delaware Crossing ; do not know that I ever asked him ; do not know the number of votes polled at that place. I have seen an account of the number, as stated before this board is all I have seen. I think that I have seen the published account of the number of votes polled at Leavenworth and Kickapoo, but have never cast it up to see who would be elected by counting the vote of Delaware Crossing at forty-three ; have never learned how the vote of Delaware Crossing was increased or decreased. I saw Henderson the day after the election in this place ; saw him on the street, and saw him at the Planters Hotel ; did not see a company of men in any room at the Planters House altering or changing anything that looked like a poll list or election returns. I have seen the published account of Mr. Henderson's statement before this board ; have never seen a box such as he there describes. Mr. Diefendorf is a resident of this town ; do not know what he was doing at Weston ; do not know where John Calhoun is now ; have not seen him since Saturday. I think he gave me to understand then that he was going to Washington. I have never heard him say what he was going to do in regard to declaring the result of the election ; have never heard him tell any one what the result was ; have not heard him express himself as to whom he should issue certificates of election ; think I heard him say that he could not do it yet, as the returns from Delaware Crossing were not before him.

BEN. J. FRANKLIN.

No. 60.

WILLIAM H. COLE, jr., being sworn, says, (February 10 :)

I reside in Leavenworth City, Leavenworth county, Kansas Territory ; was there at the election on the 4th of January, 1858 ; was a candidate for the State legislature on the democratic ticket. Col. Clarkson, Loton W. Jones, and Daniel Scully were the judges of election ; they all belong to the democratic party. I was at the polls pretty much all day long ; was inside of the room a very little. There were challengers on both sides in the room, and keeping a record of the voters. I did not see any unfair dealing on the part of the judges, or unfair voting ; as far as I know everything was conducted fairly

and honorably. The polls were opened about 9 o'clock a m., and closed about sunset. I went to Weston, Missouri, on the 13th of January, and remained about nine days; went on business and intended to come back next day, but changed my mind afterwards, being detained over there by engagements. I saw Gen'l Calhoun, Col. Isaacs, Jack Thompson, Col. Clarkson, Mr. Mathias, Mr. Deifendorf, and several other citizens of the Territory while I was there. I put up at the International Hotel; Col. Payne, Capt. Martin and Major Moore, democratic candidates, were there; Calhoun was there when I got there; was on his way to Washington. I asked Calhoun what the vote of Leavenworth county was soon after the election. He said that he did not know; that the returns from Delaware Crossing had not been received. While at Weston I inquired again, and heard Calhoun state that the Delaware Crossing returns had been received, and that the vote was 343, and that it would elect the democratic ticket in the county. Calhoun said that there was a charge of some irregularities in the returns from Delaware crossing, and that he had sent a messenger down to take the affidavits of the judges, and that the messenger had returned that day, and from the affidavits of the judges the democratic ticket would be elected. Mr. James Murphy was the messenger who went down. I saw him there with Calhoun while I was there; did not see him when he first got back; I heard that the affidavits of the judges did not state the number of votes polled; I was in company with Jack Thompson, in Missouri, one week ago last Sunday; he told me that I was defeated; I told him I thought not; he said that the judges of election had sworn that there were but forty-three votes polled, but that he had a copy of the poll-books, and that there were three hundred and forty-three votes polled. He pulled out of his pocket a roll made out upon six sheets of paper pasted together at the ends, which he said was an exact copy of the returns; I think that three hundred and forty-three was the number of the votes polled according to that copy. I have been shown a copy of the Delaware Crossing returns by this board. The copy which I saw in the possession of Jack Thompson I do not think is the same as the one there shown me. This has seven pages of names besides the certificates, and the one shown me, I think, had but six; I recognize one name on this that was on that; I am not positive that they are not exact copies, but my impression is that the one shown me numbered but three hundred and forty-three, while this numbers three hundred and seventy-nine. The last name that occurs on this is "Findlay Workman;" I do not remember the last name on the copy shown me by Thompson; I never heard this name called before; I recognize the handwriting on this return as that of some one that I have seen before, but cannot remember where I have seen it; I have never been in John Henderson's room since the October election; I have never been in Calhoun's room; I am familiar with the writing of John Henderson; if I should get a letter from him, I could tell whether he wrote it or some one else, I think; I cannot say whether this return is made out in his handwriting or not. There is the same style of writing with his, but I cannot say that there is a similarity. I inquired for Henderson some day in the neighborhood of the elec-

tion ; heard that he had gone on an electioneering tour ; did not learn where he had gone ; I saw him the day after the election ; I never heard of any letter having been sent by Henderson to Johnson county, until I heard of it in evidence taken before this board ; I spoke to Colonel Isaacks about it afterwards, as I heard that he was one of the signers He stated that the letter was nothing but what any honorable man might write.

That it was in substance requesting the democracy to poll a large vote at Delaware Crossing, in order to carry Leavenworth county for the democracy ; I saw Diefendorf since the election only a few days ago, inquired of him about the Delaware Crossing returns ; he told me that Henderson gave them to him but if there were any alterations made they were made before they were given to him or after he had handed them over ; I inquired frequently after the election what the vote of Delaware Crossing was, but never knew until I went over to Weston, except from rumor ; I know William Franklin, of Kickapoo ; saw him at Weston ; he told me that free State men had been after him to arrest him, but that they had not been able to find him, and that he had come over to Weston ; I have never asked Calhoun for my certificate, nor have not received it, and if the alleged frauds be true at Delaware Crossing I do not expect it ; I have been introduced to almost every person of my party at Kickapoo ; I should think that there were not more than five hundred voters there ; if it be true that those frauds have been committed at Delaware Crossing, I will not receive office under it. As soon as I heard that this board wanted me, I came over from Weston to Leavenworth, but learned when I arrived there that they had adjourned from there.

WM. H. COLE, Jr.

No. 51.

ISAAC MUNDAY, being sworn, deposes and says, (February 4:)

I reside at Delaware Agency, Leavenworth county, Kansas Territory ; was one of the judges of election at that precinct for the election held there on the 4th of January, 1858, for officers under the Leecompton constitution ; I was before this board to testify at Leavenworth city on the 26th day of January, 1858 ; I did not then see the poll books of Delaware agency precinct ; I have been shown now by the board a roll what purports to be the poll books of that precinct ; I find on examination a certificate made out upon a portion of a sheet of paper, containing the certificate of the judges election, signed by me and the other judges ; the signatures I believe are genuine, but the proceeding seven sheets of paper with lines drawn between two columns of names, and numbered to represent 379 names, I have never seen before ; the portion of paper upon which the certificates were made out appears to have been cut from the original poll-books as made out and signed by the judges of election, and has been wafered to this list, which was never made out by us. The poll-books which I signed at the close of the election were made out upon three sheets of paper wafered one upon

the other. The heading of the original poll-books was made out upon a broader sheet of paper than this, and in an entirely different handwriting. The names on the list were in one column, and numbered differently from what they are in this. I see nothing genuine in these poll-books, except the certificate which is appended, and which has apparently been cut from the original roll. There were some names signed on the last sheet just above the certificate; this has been cut between the certificate and the names. The paper which we used was wafered together with red wafers; these are fastened with wafers of a different color. The names of the persons who really did vote there on that day were written in a different order from what they are here. There were just forty-three votes taken in by us there, and those were all the names written on the list; on this I find 379 names, and names of men who did not vote there, and men that I never saw or heard of. I believe the whole thing is a forgery, except what appears on the last sheet, which contains the certificate, as signed by myself and the other judges. I have been shown by this board a tally list accompanying the poll-books, which tally list gives to each of the democratic candidates 379 votes; I never saw that tally list before. The heading and the certificate which we used at the election were brought to the poll-room on the day of election, I think, by Mr. Garrett; blank spaces were left for the name of the precinct to be written in; I think Mr. Findlay, one of the clerks, filled in the name of the precinct in the blank spaces in the heading and certificate. I do not know whose handwriting the original heading and certificate was made out in. I do not think it was in the handwriting of Garrett, Willson, or any of the clerks or judges of election; I do not know where Mr. Garrett got the heading and certificate. The impression made on my mind at the time was that he had brought them up from Wyandott; something was said about making out the poll-books, and he remarked that he had brought them up all prepared. I have been shown an affidavit by this board, as follows:

TERRITORY OF KANSAS, }
 County of Leavenworth. }

The undersigned, judges and clerks of election, held for State officers and members of the State legislature, held at the precinct known as Delaware Agency on the fourth day of January, 1858, do hereby certify that the returns made by us of said election were correct and genuine, and that any statement made by any person as to the vote of said precinct can only be determined as to its truth or falsity by a reference to said returns made by us as managers and clerks of said election at said precinct.

I signed an affidavit, worded as above, at Westport, Missouri, on the 18th day of January, A. D. 1858, before Samuel Salters, an acting justice of the peace for Johnson county, Kansas Territory. The affidavit was signed by myself and the other judges and clerks of the election. I heard, prior to signing the affidavit, various rumors as to there being forged returns from our precinct. The affidavit was made up in Westport; was drawn up by Mr. J. H. Danforth. Hear-

ing the various reports as to there being forged returns from our precinct, and knowing that Mr. Garrett had been arrested, and that some one had been at my house to arrest me on a charge of having something to do with it, I went to Westport for the purpose of seeing General Calhoun, who, it was reported, would be there. I did not find him there; Mr. Danforth was there; I met him at the post office; never saw him before that day. At the time I signed that affidavit I did not know that there were any forged returns with my signature attached. I supposed then that the genuine returns were in the hands of Calhoun, and believed that if we made this affidavit Calhoun would get our signatures correctly, and would count the returns as made out by us; we left the affidavit in Danforth's possession. I sent for Grinter and Wilson to come to meet me at Westport; Garrett and Findlay were there; we went there expecting to meet Calhoun. At the time Danforth wrote the affidavit, I think he had heard that there were only forty-three votes polled. I mentioned at the time that perhaps it would be better to state in the affidavit the number of votes polled being forty-three. Mr. Findlay said that he thought it would be better to state that the returns, as made out by us, were correct; Mr. Danforth gave as his opinion that it would be the proper way, and so we wrote the affidavit. The affidavit was made before Samuel Salters. I do not know where Salters or Danforth lives. Mr. Garrett told me that he had stated publicly in Lawrence and Lecompton, and had told Governor Denver, that the actual vote was but forty-three, and I supposed that Calhoun knew what the true vote was, and if we made oath that the returns, as made out by us, were the only evidence as to what the real vote was, it would be counted only forty-three. I supposed that Calhoun had the correct returns, as Henderson was at our precinct when the polls closed, and suggested to take them up to Leavenworth and give them to Calhoun. I have no idea who committed the forgery of those returns.

ISAAC MUNDAY.

No. 52.

JAMES C. GRINTER, being duly sworn, deposes as follows, (February 4:)

I reside in Delaware Agency, Leavenworth county, Kansas Territory; was one of the judges of election at that precinct for the election of the 4th of January, 1858, for officers under the Lecompton constitution. We received forty-three votes at that precinct on that day, and made out our returns and poll-list accordingly, with a certificate attached to the bottom of the poll-list, signed by Mr. Munday, Mr. Garrett, and myself, who comprised the judges of election. I have been shown by this board what purports to be the poll-lists and returns of the election at that precinct, on the 4th of January, 1858,

made out upon seven sheets of paper, with the certificate, as made out and signed by us, attached to the bottom of the seven sheets. The certificate attached is the genuine certificate which we signed at the close of the election on that day, and shows clearly to have been cut from the returns as made out by us and wafered to the list, which is all forged. Nothing genuine appears on this whole return except the certificate and signatures which are attached to the bottom. The seven sheets preceding the sheet upon which the certificate is written, are written upon different paper, in different order, and in a different handwriting from what the original returns as made out by us were. These forged returns contain a list of names to the number of 379, and the accompanying forged tally list shows 379 votes for the entire democratic ticket of Leavenworth county. The real vote was only 43, and all for the democratic ticket. I have heard the evidence given in before this board by Isaac Munday, and concur in all the statements made by him in relation to the returns of that precinct. Our genuine returns were made out upon three sheets of paper. I procured the wafers with which the sheets were fastened together. They were common red wafers. The sheets in these forged returns are fastened together with wafers of a light yellowish color.

JAMES C. GRINTER.

No. 64.

L. S. BOLING, being sworn, deposes and says, (February 12:)

I reside in Lecompton, Douglas county, Kansas Territory. I went to Leavenworth shortly before the election of the 4th of January, 1858; reached there on the 3d, the day before the election. I was with General Calhoun, in his room at the Planters' House on that evening. Messrs. Clarkson, Miller, Isaacks, Franklin, Martin, F. J. M. Marshall, General Calhoun, Mr. Henderson, Mr. Diefendorf and myself, were in General Calhoun's room that evening. I occupied the room with General Calhoun for two or three days, and it may be that all these gentlemen were not in the room on that evening. It was determined that evening that Mr. Henderson should go down to Shawnee and Delaware Crossing that night. I do not know who suggested his going. It was a subject of general conversation in the room that evening. The object for which I understood he was to go to those places was to attend the election, and stir up the voters. There was a letter written to be carried down by him; I do not recollect who wrote it, nor what the language of the letter was; I think Mr. Danforth was one of the persons to whom it was addressed. Do not recollect who else it was directed to. As well as I can recollect the import of the letter was that the persons to whom it was addressed should lend their aid to Henderson for the purpose of getting out a full vote at Delaware Crossing. As it was believed the election in Leavenworth county would be very close, I was asked to sign the letter, but declined doing so. My recollection is that Bob Miller was the person who asked me to sign it. The person who asked me to sign it told

me that Isaacks, Calhoun, and the rest of them had signed it; I did not hear the names read, nor did I see them sign it. Calhoun was in the room pretty much all the time. The letter was read aloud. My impression is that Calhoun was present when the letter was read.

My room was No. 27. The next I saw of Henderson was on Tuesday morning about 10 or 11 o'clock in the streets. I asked him "what was the news," and he said "it is all right," and asked me not to say to any one that he had been down there; had no further conversation with him that I recollect; do not recollect of having any conversation with him relative to the success of his mission; heard that the vote of Delaware Crossing was 543; do not recollect who told me; I think very likely it was a democrat; I never saw the returns that I know of. Calhoun left Leavenworth about the middle of the week; after the election went over to Weston. I remained at or about Leavenworth until Saturday, when I left for Lecompton; I can't say whether I ever did or did not have any conversation with Calhoun in relation to the Delaware Crossing returns prior to the counting of the votes. It is my impression that he told me that the democratic ticket had carried in Leavenworth county.

I slept in the same room that General Calhoun slept in; he slept in the room Sunday night before the election, and on Monday night of the election. It is my impression that he left there for Weston on Tuesday evening.

Henderson did not occupy that room regularly. He slept there on Tuesday. I was in the room about 7 o'clock; saw him on the bed asleep. I did not see any box there purporting to contain the returns of Delaware Crossing. I never heard anything said about any such box. I knew where Henderson was gone, and knew what his business was on election day, and when I met him in the streets and he said to me that "all is right," and that I must not tell any one that he had been down there, my impression was that there was a heavy democratic vote polled there. The only Danforth that I know of, is the Mr. Danforth who was a member of the constitutional convention. Do not know of any organization to which Mr. Danforth belongs by which he can import voters from Missouri to the Territory. My impression is that it was said that Mr. Danforth might bring some men over from Johnson county to Leavenworth county. I think one hundred was mentioned that he could bring over. My impression is Calhoun was in the room at the time. I did not think it was necessary to sign the letter, and so declined signing it. I did not hear any other places except Shawnee, in Johnson county, and Delaware Crossing mentioned, at which Mr. Henderson should go.

I was present at Lecompton, in company with Calhoun, Marshall, and some others, when it was said that it would be necessary for the candidates to go out through the Territory and stir up the voters. I overtook Calhoun, on his way to Lecompton, on the 9th of January, at Easton; went in company with him to Lecompton. A day or two after that Calhoun stated that he thought the democratic ticket was elected in the Territory.

While we were in the room on the night before election at the Planters' Hotel, Mr. Deifendorf was there considerable of the time.

We were there some two hours. My impression is that he took part in the conversation relative to Henderson's mission. On the next night after election, I went to my room, after supper, and saw Henderson there; Isaacks and Deifendorf, I think, were in the room. I only remained there a very few minutes.

Do not know of any registry of names upon the poll-books, or any unfair dealing with the election in such a way as to defeat the fair expression of the people at the polls. Calhoun has never told me who he intended to issue certificates of election to.

L. S. BOLLING.

No. 66.

THOMAS EWING, jr., being sworn, says, (February 12:)

I have read the affidavit of Theodore F. Garrett, (one of the judges of election at Delaware Agency precinct,) which affidavit was found among the returns buried at Lecompton.

Mr. Garrett was at Lawrence on the 12th of January, 1858, the day before the returns were opened by Calhoun. Great anxiety was felt in regard to the returns from his precinct, as it was reported that a forged return had been made showing several hundred votes. Mr. Garrett went with me to Lecompton that day and saw Governor Denver, and stated to him and to others that the actual vote was but forty-three.

The next day I was told by gentlemen who were present when the returns were opened that the returns from that precinct were not produced; I therefore proposed to Mr. Garrett that he should go home and make out a duplicate of the original returns from the poll-books in his possession and have it signed and sworn to by the judges and clerks of election; that he should then bring it to Leavenworth, and I would go with him to Calhoun and deliver it. Mr. Garrett said he would do it cheerfully. I made no other proposition to him, and have not seen or heard from him since. My object in making this suggestion to Mr. Garrett was simply to have the true vote returned and received, and the forged ones rejected.

THOS. EWING, JR.

KICKAPOO PRECINCT.

January 4, 1858

- No. 1. J. W. Morris.
2. J. M. Dickson.
3. John O. Vaughan.
4. Adam Fisher.
5. J. G. Losee.
6. John H. Ohandler.

- 8. John A. Brown, (captain 4th artillery.)
- 9. W. W. Gallagher.
- 10. Richard Hathaway.
- 11. William H. Elliott, ("recalled.")
- 12. Joseph Cowell.
- 13. Alexander Ralston, ("recalled.")

December 21, 1858.

- No. 7. William Perry.
- 11. William H. Elliott.
- 13. Alexander Ralston.

SHAWNEE PRECINCT.

January 4, 1858.

- No. 14. A. J. Harrison, (lieutenant 6th infantry.)
- (For the above see testimony headed "Shawnee precinct.")

DELAWARE PRECINCT.

January 4, 1858.

- No. 16. Green B. Redman.
- 13. Thomas Hamill.

January 21, 1858.

- No. 16. Green B. Redman, ("recalled.")

No. 1.

J. W. MORRIS, being duly sworn, deposes as follows :

I was at Kickapoo at the election on the 4th instant ; was there at about 9 o'clock a. m., before the polls were opened There were several of us together. We proposed to challenge voters. One of those present (Mr. Fields) proposed to keep a list of the names of those who voted at that place. We were told by persons about the polls, who were around with clubs, which they carried in their hands and under their arms, that no damned abolitionist should challenge voters there. When we attempted to approach the polls quietly they would crowd us away, so as to prevent us from seeing what was going on within the room where the judges of election were. I was at the window for a short time without any of them noticing me. When they did notice me, one of them who carried a club came in front of me and crowded me back, so that I could not see within the room. I did not make any resistance, as the clubs which they carried I considered an indication of what they intended doing. Those around us aforesaid seemed to act in concert. The clubs carried were about eighteen or twenty

inches in length. They were too short for walking canes, and were not used as such. After being crowded from the polls, I tried several times to get back again, so as to see what was going on within. I saw parties of a dozen or so crowd about the polls and hand in tickets at the window; saw the same parties hand in tickets several times during the day; could not hear what names they gave in with their tickets. I was standing within one rod of the window about fifteen minutes at one time; saw a boy, apparently from fifteen to eighteen years of age, go up and vote, giving his name as Russell. I immediately asked Mr. Franklin (one of the judges) if that boy who gave his name as Russell was twenty-one years of age. He replied, "Oh, yes, Mr. Russell is twenty-one. It is all right." Within two minutes the same boy went up and voted again; could not hear what name he gave the second time.

Another man was led up to the polls and voted, giving his name as Williams; in about ten minutes he went up again and voted, giving the name of Todd. The same person came up the third time and voted again within fifteen minutes; I could not this time hear what name he gave. Mr. Calvert went to the window and voted, giving his name as Michael Stokes. The name was repeated by Mr. Franklin. Calvert replied again: "Yes, Michael Stokes." Mr. Calvert was acting as county recorder; is well known in that section of country, and was personally known to Mr. Franklin, who received his ballot. There was no crowd at the polls at this time, and I could not be mistaken in regard to Calvert's vote. I saw a number of persons, during the day, vote more than once, but could not remember their names; did not see the tickets handed in by them so as to tell for whom they voted.

I left there about three o'clock, to the best of my knowledge. I should judge that about four hundred and fifty votes were handed in up to that time, possibly five hundred; could not tell accurately; should think there were from two hundred and fifty to three hundred different persons in town during the time I was there.

I frequently heard Mr. Franklin cry out for "more votes." There were government troops stationed in town about 250 yards from the house, and not in sight of the window where the votes were received. Mr. Cowell, deputy United States marshal, requested the officer in command to bring the troops up to the polls. The officer did not comply with his request. Some of those who were about the polls also carried bowie knives belted around them. Am not well acquainted in that section of country, and could not tell whether all those who voted were residents of Kansas or not. I inquired of J. W. Martin, who is an old resident there, who one person was who voted so many times and voted under the name of Williams and Todd. Martin said he did not know; that the man was a stranger there.

I believe that that man voted a dozen times at least. He was led up to the polls by other persons; was apparently drunk; should think that there were two hundred acting in concert with those who were about the polls, and appeared ready to assist them in consummating the fraud.

J. W. MORRIS.

No. 2.

JAMES M. DICKSON sworn :

I was at Kickapoo on the 4th of January, 1858, in company with Thomas Ewing, jr.; was told by two of the judges of election (one of them was Mr. Franklin) that they had no objection to our having a clerk keep a list of voters, not as an official, but to keep a record with an official clerk. When the polls were opened they refused to permit a clerk not acting officially to remain inside the room or to keep a record of the votes polled. There was an armed body of men, with guns, clubs, and side arms—say about thirty to fifty men—outside of the room where the election was held, who refused to let any person challenge or keep a tally of votes outside. They would come to the polls swearing that “no damned abolitionist should challenge any person at the polls,” and using other epithets in like manner; that “the damned abolitionists should not dictate to them in their election.”

I saw a boy who I think was not to exceed eighteen years of age go to the polls and vote; do not know the name. I left the polls at about half past eleven o'clock a. m.; believe that there were not more than one hundred votes polled up to that time, and that there were not more than one hundred and fifty to two hundred men about town from the opening of the polls to the time I left. I heard Captain Brown, who was in command of the United States troops, refuse to obey a written demand from Deputy United States Marshal Cowell to station the troops near the polls to protect those persons who had been threatened with death if they attempted to challenge or keep a list of voters.

J. M. DICKSON.

No. 3.

J. C. VAUGHN sworn :

I arrived at Kickapoo in company with Thomas Ewing, jr., at half past three o'clock p. m., on the 4th of January, A. D. 1858. Just before reaching the town I met Dr. Morris, Mr. Currin, and another citizen, who informed me that the free State men, being unable to get fair play, had left the place.

On reaching town we met Captain Brown, to whom Mr. Ewing delivered an order from the commanding officer at the fort, who, after reading the order, turned to Deputy Marshal Cowell, saying: “I am under your orders.”

I took my stand with Mr. Ewing at the polls. At my request Captain Brown inquired of the judges of election the number of votes polled. The answer was, 467; this was at a quarter past four o'clock.

We consulted the deputy marshal as to the policy of stationing the

troops who, during the day, had been kept some two hundred yards from the polls, directly before them. But he concluded, as there were no free State men save ourselves on the ground, that it was better to let the troops remain where they were.

At this time I do not suppose there were fifty voters within sight of the polls. My impression is, there were not thirty.

The voting from the time I arrived at the polls until they were closed at half past six o'clock was very slack. I do not believe between a quarter past four and five minutes before six o'clock, when the second inquiry was made by Captain Brown as to the number of votes polled, that ten ballots had been cast.

Indeed, so remiss were the voters that Mr. Franklin (a judge of the election) came to the door of the poll-room and made proclamation to the citizens to come up and vote. His cry was, "more voters wanted ;" and that cry was repeated loudly several times.

At five minutes before six, Captain Brown, by request, inquired again of the judges the number of votes polled.

The answer was 864.

It was a moral impossibility that so many votes could have been cast in that time without a steady and continual stream of men pouring in upon the polls.

The men themselves were not there. I watched closely every man who cast a ballot, and my belief is, from the time we reached the polls, namely, at quarter past four, until they were closed, at half past six, that there were not twenty votes, legal and illegal, cast. The scene around the polls was sad enough to behold. Men and boys, violent and drunk, armed with dirks and clubs, and alike threatening and insulting in their bearing, declared that no voter should be challenged; swore that the boys of Kickapoo had a right to vote and should vote.

Double voting was barefaced; so barefaced, indeed, that the judges inside and the bystanders outside could not help seeing it.

JNO. C. VAUGHAN.

No. 4.

ADAM FISHER affirms:

I am a citizen of Leavenworth county, Kansas Territory; have resided there upwards of three years; was at the election held at Kickapoo, in said county, on the 4th of January, 1858, for State officers and members of the legislature, under the Lecompton constitution; was there for the purpose of using all the legal means in my power to prevent frauds at the election, as that place has become notorious for unaccountable election returns. Voting had commenced before I arrived at the polls. A serious difficulty appeared to be brewing. The free State men claiming the right to challenge those, and those only, whom they might think were illegal voters. This was positively refused by the other party by words and force; one of the pro-slavery men stating that there were a large number of their

men armed, and anxious for a fight, and only wanted a pretext to commence, consequently it would be dangerous to interfere in any shape. A number of men armed with hickory clubs were around the polls apparently for the specific purpose of smuggling in double and other fraudulent votes. When such as I conceived to be a double voter went to vote, he would be surrounded by this club-gang so as to prevent those on the outside from knowing to a certainty whether the vote was cast or not.

I saw a number of men vote twice ; saw boys not over fifteen years old vote ; saw the judges receive votes without seeing the voter ; saw them take votes by proxy ; saw free State men prevented from voting by those men who composed the party who were armed with clubs until assisted by the sheriff through my interposition. I do not think there were to exceed three hundred men in town during the day, including the citizens. The men with clubs were threatening vengeance upon free State men throughout the day.

There was a company of United States troops who took a position in town about 11 o'clock a. m. They were stationed about forty rods in rear of the polls, where they remained until I left in the evening. Their presence and position did not furnish any protection to those who desired a fair and honest election.

ADAM FISHER.

No. 7.

WILLIAM PERRY, recorder of Leavenworth county, brings into the office of the board of commissioners the poll-books of Kickapoo precinct, Leavenworth county, Kansas Territory, for the election held at that place on the 21st of December, 1857, and makes oath that they were on file in his office.

WILLIAM PERRY.

No. 8.

JOHN A. BROWN, United States army, being duly sworn, says :

I was in command of a company of United States troops, stationed at Kickapoo, on the 4th of January, 1858. A written demand was made upon me by the deputy United States marshal to station the troops at the polls. They were stationed about eighty yards from the polls, in sight of the house, but out of sight of the window where the votes were received. The sheriff of the county told me he thought that it was an unnecessary display of force to station the troops there, and in presence of the deputy marshal and myself said that he thought that he was the proper person to conduct that election, and tried to prove the same to the deputy marshal from the acting governor's

proclamation ; at the same time saying to the deputy marshal, that if he chose to take the conducting of the election out of his hands he should have nothing to do with it, or words to that effect. My first instructions directed me to report the arrival of my force to the sheriff, marshal, or their deputies, and in case of the absence of all of these officers, then that the judges of election were the proper persons to dispose of my force for the purpose of keeping peace. I reported, on my arrival, to the sheriff, on Sunday p. m. of the 3d of January, and held myself subject to his orders, so far as the disposition of my force was concerned, until I received subsequent instructions on the afternoon of the 4th, I think between two and three o'clock p. m.— I have no certainty as to the time— when I reported to the deputy marshal that my force was subject to his orders. I will here state in connexion with this that I would have obeyed the summons of any peace officer during that day had I been called upon to quell any disturbance that had commenced, and so stated to both the sheriff and deputy marshal.

I was about the polls very frequently from about half past three to half past six o'clock, when they closed—not as frequently before three o'clock as after.

I saw one person vote twice ; what name he voted under the first time I do not know ; the second time he voted under the name of Theodore ; he was the only person whom I saw vote twice. I inquired the number of votes polled, to the best of my knowledge, at about half-past three o'clock ; inquired of one of the judges of election ; he told me four hundred and sixty-seven ; inquired twice after this time and was answered, about nine hundred, on the first inquiry, and the second time, I think the reply was, upwards of nine hundred ; I have no means of knowing how many votes were cast between the time I inquired the first and second time as to the number of votes polled.

I made an estimate of the different men that were in and about town during the day, and should judge, according to the best of my belief, between five and six hundred. There may have been more and may have been less. I think I saw one hundred men about the polls between the time I inquired of the judges the first time and the closing of the polls. There may have been more, but I did not see them. I cannot say whether or not any of them voted before.

I considered that I had no instructions to use my troops without an order from the civil authority, and should not have permitted any troops to have come in contact with the citizens without a written order from the civil officers.

The announcement was made from the poll-room that the polls would be closed at half past six o'clock. After this announcement was made I heard twice, perhaps three times, a voice, raised pretty high, crying " more votes," apparently coming from the room where the polls were being held. I do not know who said this ; it might have been different each time. I was around the polls but little during the forenoon.

JOHN A. BROWN,
Captain, 4th Artillery.

No. 5.

J. G. LOSEE, being sworn, deposes and says :

I was at Kickapoo on the 4th day of January, A. D. 1858 ; went there to act as challenger at the election for officers under the Le-compton constitution ; I attempted to challenge, but was forced from the polls. Mr. Fields, of Leavenworth, at the same time, attempted to keep outside a list of the voters, but he too was crowded off ; Mr. Fields applied to the judges to let him keep an unofficial list of the voters inside, but was refused. I then attempted several times to keep an account of the voters, but was forced off each time ; I offered to stand at the polls with any pro-slavery resident of Kickapoo, and to challenge none whom he would vouch for as legal voters ; that proposition was rejected. There was a crowd of seventy-five or an hundred men around the polls while I was there, armed with fresh-cut clubs about two feet long, and with revolvers and Bowie knives ; they were violent in threats to kill any man who challenged a voter or took down a name, and said they had been defrauded enough by men keeping a list of voters there. We found that we could not challenge or keep a list of the voters without the troops would protect us ; the troops were stationed out of sight of the place of voting ; the officer refused to station them at the polls, although requested in writing by the deputy United States marshal to do so. Finding that nothing could be done, I left there about noon. In my judgment it would have required fifty well armed men to protect a challenger against the mob.

J. G. LOSEE.

No. 6.

JOHN H. CHANDLER sworn, says :

I was a resident of Kickapoo, in Leavenworth county, for about one Lecompton constitution on the 4th of January, A. D. 1858. Arrangement before and for several days after the election for officers under the ments were made and talked of among the people of Kickapoo, for several days before the election, to guard the polls ; they said they intended to do their own voting in their own way, without interfering or watching from the Leavenworth men ; they placed their brass cannon so as to rake the polls ; it was said to be loaded ; I was about the polls not more than two hours during the day ; I saw Mr. Findlay, who lives at Weston, vote as John Shaffer ; I saw another man vote as Thomas Quincy and as Joseph Begle ; I know that neither of those names are his, but cannot recollect his true name. There were forty or fifty armed men at the polls, appearing to act in concert to prevent challenging, and some of them swearing that they would kill any one who did challenge. Alexander Ralston (a judge or clerk of the election) stated that no man had a right to challenge. I think that

there were not over three hundred men in town that day, including the residents of Kickapoo and excluding the United States troops; none of the troops voted, to my knowledge.

JOHN H. CHANDLER.

Recalled. I resided in Kickapoo, Leavenworth county, Kansas Territory, at the time the vote was taken upon the Lecompton constitution on the 21st day of December, 1857; was in town all day; I was particular to notice the number of persons in town, as it was reported that this precinct was in the habit of polling a large number of votes; according to the best of my judgment there were not to exceed two hundred men in the town during the day, including the residents of Kickapoo. I passed the place of voting about 11 o'clock at night; voting was still going on. I do not know the exact number of votes claimed to have been polled; heard the next day that there were upwards of 900 votes polled.

JOHN H. CHANDLER.

No. 9.

WILLIAM W. GALLAGHER sworn, deposes as follows:

I was at Kickapoo on the 4th instant; reached there at about 12 o'clock m., or at the time the judges of election had adjourned for dinner. I saw no person at that time with whom I was acquainted. When the judges returned and opened the polls there was quite a rush of men, who were very much intoxicated, to the window; the men had clubs in their hands; saw one man with his left hand full of tickets come into the crowd; there appeared to be considerable contention about the right of one man to vote; this man who had his hand full of tickets said that he knew the man had a right to vote; the contention appeared to be among themselves—all members of one party—and looked to me as if intended as a ruse to give them a chance to vote; he took a ticket out of his hand and put it into the window, where one of the judges took it from him; the noise was so great that I could not hear the name given in; I then got upon a block, where I could see over the heads of the crowd and get a fair view of the window; the man with the tickets then commenced handing his tickets in, one at a time; each time he handed in his ticket, the crowd outside would raise a shout so as to prevent hearing the names given in; that man handed in six tickets, one at a time, before he left the window; I did not know the man, nor any of the crowd who were gathered around him; I asked Mr. Dale, who lives in Platte City, Missouri, if he knew the man; he said he did not; I afterwards saw Mr. Dale talking with him, and was satisfied from his manner of conversation that they were acquainted.

I left there about an hour before sunset. The voting was very

slack; at times they would rush up to the polls in crowds from the drinking saloons, vote, and go back again; saw the same parties come back and surround the window again, but there was so much noise made by them that I could not hear the names that were called. They repeated this frequently. The voting appeared to be carried on by that gang.

W. W. GALLAGHER.

No. 10.

RICHARD HATHAWAY, being duly sworn, deposes and says:

I reside in Kickapoo precinct, Leavenworth county, Kansas Territory; have lived there since 1855, and before the precincts were districted; am well acquainted in that precinct. I took a census of township seven, (7,) of ranges twenty-one and twenty-two, (21 and 22,) which comprises the greater part of that precinct; takes in the village of Kickapoo and the most thickly settled portion of the precinct. A portion of these two townships are not in the precinct. I was in conversation with Mr. Jones—a pro-slavery man—who requested me to ascertain the political sentiments of the people when I took the census. I saw him again yesterday; told him that I had found in that portion of the precinct in which I had taken the census, 118 pro-slavery, 40 free State, and ten whose political sentiments I could not find out. He told me that our figures differed; that the correct census showed 330 voters. When I explained that the district which I took the census of did not comprise the whole precinct, he said that would account for the deficiency. I believe, to the best of my knowledge, that there are between three and four hundred voters in the entire precinct—believe that three hundred and fifty is as many as can be found.

R. HATHAWAY.

No. 11.

WILLIAM H. ELLIOTT, being duly sworn, deposes and says:

I am sheriff of Leavenworth county; reside in Kickapoo, in said county; was there at the election of the 21st of December, 1857. I reside in the out edge of town, about two streets from where the polls were held. Was at the polls in the morning, and voted soon after the polls were opened. Have lived in Kickapoo nearly three years; am acquainted with a majority of the citizens there. A good many have come in lately since the land office was located there; that I do not know.

I returned to the polls an hour or two before sunset. There was quite a crowd about the polls at that time. When I went up to supper there were some 25 or 30 about there. When I first came up there must have been twice that number. I knew most of them about there at that time.

I do not know any men in that precinct by the name of Thomas F. Marshall, Thomas H. Benton, Horace Greely, John P. Hale, James Buchanan, John C. Fremont, J. W. Denver, Isaac Atchison, William H. Seward, or Edwin Forrest.

If there are more than six Calverts in that precinct over twenty-one years of age I do not know them.

There are not over four men by the name of Brooks that I know of in that precinct ; do not know of but one man by the name of J. W. Martin.

I have seen the names mentioned above on the poll books of Kickapoo precinct ; do not know of any such men in the precinct.

WILLIAM H. ELLIOTT.

WILLIAM H. ELLIOTT (recalled) sworn.

I am sheriff of Leavenworth county ; was at Kickapoo precinct, in said county, on the 4th of January, 1858, at the election for State officers and members of the legislature ; was there all day. Williams, Myers, and Franklin, I think, were the judges of election. A man by the name of Willson, I think, was one of the clerks. I am not intimately acquainted with the political sentiments of all of the judges, but think they all vote the democratic ticket ; in fact, am quite sure they do.

Early in the morning, before the polls were opened, I met Deputy Marshal Corvell and Captain Brown where the troops were stationed, out on the edge of town. Mr. Corvell had taken charge of the troops before I went out. I did not have charge of them during the day.

Captain Brown seemed to be at a loss to know who should take charge of the troops, Corvell or me.

I gave no orders to the troops during the day. They were stationed 100 or 150 yards from the polls. I was about the polls two or three times during the day ; was there about ten minutes the first time ; did not see more than half a dozen men vote during the day. When I first went up some one was at the polls wishing to go into the poll-room and act as clerk or keep a list of voters. The crowd outside would not permit him. I saw non-residents there, and very few from Missouri, but did not see them vote ; saw one man in the crowd with a club in his hand some eighteen inches or two feet long. He would not permit a challenger inside of the room.

WILLIAM H. ELLIOTT.

No. 12.

JOSEPA CORVELL sworn, deposes as follows :

Was at Kickapoo precinct, Leavenworth county, K. T., in the capacity of United States deputy marshal, on the 4th of January, 1858 ; went there under instructions of the United States marshal to protect challengers and prevent illegal voting.

I arrived there, should think, between six and seven o'clock a. m. The troops were stationed about half or three-quarters of a mile from the polls at this time. I ordered Captain Brown to bring his men into town, and he did so, stationing them about 100 or 150 yards from the polls. I went to Captain Brown, who was in command of the troops; he told me that he had reported to the sheriff of the county.

Immediately after the polls were opened in the morning, a crowd gathered around of nearly one hundred men, I should think. They were around with clubs; most of them were hickory clubs, I should think, about two and a half feet long.

Mr. Fields stood near the window with a book in his hand to take down the names of voters as they voted. Some two or three of the crowd swore that they would shoot the first man who challenged a voter or put down the name of a voter. Some gentlemen from Leavenworth, in order to save violence, got Mr. Fields to leave; thought it was not safe for him to stand there. Mr. Fields came away and Mr. Losee took the book. They crowded him away; would not let him near the polls. I went to Captain Brown and made a demand for the troops, requesting him to station them at the polls. I made my demand in writing. He consented at first to do so, but, after holding a private conversation with General Whitfield, he declined to do so. His reason for not complying with my demand was: he said he was sent there as *posse comitatus* to aid the civil authorities in quelling any disturbance and prevent violence. I then went to the sheriff and asked him to aid in protecting challengers, which he refused to do; and claimed that if I was sent there to protect the polls he did not think it was his duty to assist me in any way. I then went back to the polls, and the sheriff told one of the judges (Mr. Franklin) that if he knew any man that came up there he need not call his name.

Mr. Ewing then took a despatch to General Harney. Having sent back orders to Captain Brown to obey my command, I did not receive that order until 4 o'clock in the afternoon. It was then too late to have the troops be of any service to me.

While Mr. Ewing was gone with the message to Harney, I was at the polls; saw a man by the name of Todd vote twice without leaving the window. He voted once under the name of Todd and once by the name of Riley; he stood in front of the window where the judges could see him very plain; I saw him vote again the third time; do not know what name he gave then. There was one pane of glass, and I think two, out of the window. The votes were taken through where the glass was out in the middle of the casement. Saw a man by the name of Pattie vote three times; voted once by the name of Johnson and once by the name of Theodore. The other name given I do not recollect. He voted three times within twenty minutes; he offered his vote the fourth time. The judge (Franklin) had the ballot in his hand when I challenged it. He took back his ticket and went away. I challenged his vote twice after that, but he did get in one vote after I challenged him. I do not know the name he gave; he got in four ballots, and I challenged him three times besides—making seven times that he went up to vote.

I saw others vote twice, and some three times. I could not learn their names. When Pattie offered his vote and I challenged him the first time, I told Franklin that he must know that he had voted twice before. He replied that he did not notice him. Dan Brown said to Pattie, "swear in your vote;" Franklin repeated the same words. About twenty minutes before the polls closed, I heard a man ask the judges how many votes were polled. They looked at the books and replied 905. I kept account after that, and there were but two votes polled after that up to the closing of the polls.

JOSEPH COWELL.

No. 13.

THOMAS HAMILL sworn, deposes and says:

I reside about two miles from Delaware; was at Delaware at the election of the 4th of January, 1858. About one o'clock I came up to the window with a gentleman from Leavenworth, (Mr. Noteware.) Mr. Noteware asked one of the judges some questions just as I came up. Do not know what the question was. The judge asked him if he was running for any office. The judge was called Miller; I do not know him; was told that was his name. I do not remember Noteware's reply. The judge then turned to Mr. Bonnell, and told him to put us away from the window. Mr. Bonnell ordered us away; told us he would have the troops clear us away. I then went and told the deputy marshal about it. He told me to go back. I went back, and stayed there a few minutes; saw a gentleman come up and hand in his vote to this same judge. He took the ticket in his right hand and opened it—the ticket. The ticket did not appear to please him. He had some open tickets in his left hand. He took one of the tickets from his left hand, and put it in the ballot-box in place of the one handed in. I then left the window; could not be mistaken in regard to it; saw it very clearly. I heard Mr. Miller crying out at the window for "more voters;" he had a number of tickets in his hand, headed "democratic ticket." The ticket which Miller put into the ballot-box in place of the one handed by the man mentioned above was headed "democratic ticket." The other tickets were headed "free State ticket." The United States troops were stationed close to the polls. I saw a man under guard by the troops, who stated that his horse was on the other side of the river, and that he had "crossed over in a skiff." This man, who was under arrest, had stated before that he was a resident of Missouri. There was on that day a general turn out of all the voters of the precinct.

THOMAS HAMILL.

No. 15.

ALEX. RALSTON, being duly sworn, deposes as follows :

I reside in Leavenworth county, Kickapoo precinct, Kansas Territory. Was there at the election in that precinct on the 21st day of December, 1857. Am tolerably well acquainted in that section of country. Am keeping a grocery store at that place. Was at the polls once during the day, at about ten o'clock a. m. Did not see but one or two persons vote while I was there.

I have seen the Kickapoo poll-lists as appearing before this board. Have looked over the names on the list. Am pretty well acquainted with the voters in that section of country. I have seen the name of J. W. Martin appearing twice on the poll-list. Do not know but one man by that name. I have seen on the poll-list, which numbers one thousand and twenty-nine, one hundred and seven names of people whom I know to reside in that vicinity. I see a great many strange names on the poll-list—names of people that I have never seen, or do not know where they reside. I have marked on the list all the names that I know. I know of five men by the name of Calvert over twenty-one years of age in that precinct. There are several names of people who reside in the precinct; but as I do not know their Christian names, I did not count them.

A. RALSTON.

A. RALSTON sworn, (recalled :)

I reside in Kickapoo, Leavenworth county, Kansas Territory; am keeping a grocery store there. Was there on the 4th of January, 1858. My place of business is on Main street, near the levee, about three lots from where the election was being held. Was one of the clerks of election on that day. The judges of election were Messrs. Williams, Franklin, and Myers. Mr. Willson was the other clerk. The polls were opened at about 9 o'clock, and closed at half past 6 p. m. I signed the returns the next day. The judges took charge of the poll-books on the night of the 4th, at half past 6 o'clock. I saw them again about 9 o'clock the next day; saw no alterations in the poll-lists. I was stationed about five feet from the window where the votes were received. I was sitting with my back to the window. I recorded the names of men that I did not know. I opened and headed the poll-lists in the morning. Wrote the first names on the lists; commenced numbering the voters, but made a mistake in the numbers, and then stopped numbering. I wrote all the names on the list. I saw among those who voted the names of men whom I did not know. I did not record the name of any man that I knew to live out of the Territory. The voting was at sometimes very rapid and sometimes very slack. The voting was slack for about two hours before the polls closed. I write ordinarily fast. I could hear the cry of the judge and record the names of two voters in a minute. There was at times, during the last two hours, rapid voting. I could have recorded twice

as many voters in the last two hours as I did record. I looked out of the window, during the last two hours, and saw the men who were about the polls. I saw Mr. John C. Tarr there at the time the marshal challenged a voter. I did not see the man who was challenged. I saw the judge swear voters that day; saw him swear two or three dozen voters. The man came up and offered, when the marshal said "I challenge that vote," the man immediately turned about and walked away. Mr. Tarr was standing close to the window; had just handed in his vote. One of the judges had the ballot-box in his hand a part of the time, and a part of the time on the table. The judge had the ballot-box on his knees a majority of the time. Williams or Myers had charge of the ballot-box, Franklin sat by the window and received the votes, and handed them to the judge who had charge of the box.

I have lived there since 1855; did not do much until last spring; since then have been in the mercantile business. I am pretty well acquainted about town and with men who come into town to trade. I signed the certificate of the judges of election, certifying to the poll lists immediately under the list of names. The general demeanor of the crowd about the polls was sometimes pretty rough, and again quiet. I saw some men armed with sticks; I heard some one outside say that no person should take their names as clerks of election outside of the room.

All the names written on the poll-list were called out by the judges and recorded between nine o'clock a. m. and half past six p. m., at the time the polls closed. I do not know where the poll-books are; have not seen them since I signed them.

A. ROLLSTON.

No. 14.

A. J. HARRISON, being duly sworn, deposes as follows:

I was at Shawnee precinct, in Johnson county, Kansas Territory, on January 4, 1858; was lieutenant of a company of United States troops stationed there. About one o'clock p. m. we were called into town by the marshal. Col. Titus, with one or two other men, were there; had knocked down the keeper of the hotel. I was not acquainted with Col. Titus before that time. He was there with a two-horse buggy; it was said he lived in Kansas city, Mo. I do not think I saw, while there, over fifty men.

On our road there we saw very few settlers except Indians; what the settlements are in other directions I cannot state. We were called upon again about half past five p. m. by the deputy marshal, stating that some Missourians had come over, and were about to destroy the ballot-box; that he wanted us to come immediately to town. I took some twenty men and went down; on my way there I saw four men on horseback, coming from the town and making considerable noise

as they came along. When I arrived at the town I could see but twenty-five or thirty men in town, and no disturbance.

I reported to the marshal, and he told me that the Missourians had concluded to leave, but asked that I should remain until the polls closed, which I did.

We were stationed about half a mile from town ; we were stationed off from the road ; could not have seen persons coming from or going to Missouri.

A. J. HARRISON,
2d Lieutenant 6th Infantry.

No. 16.

GREEN B. REDMON, being duly sworn, deposes and says :

I was at Delaware on the 4th of January, at the election for State officers ; was one of the judges of election. I think that there were between 150 and 200 votes polled. My son and John Miller were the other judges. There was a warrant out for Miller and he left. Some one else was appointed in his place.

Question by Mr. Adams. Did you see any irregularities in the conducting of that election.

Answer. I am not afraid to answer the question, but have been arrested and do not think you have any right to ask such a question. I think I know the object of the question and do not intend you shall make capital off from me.

I did not sign the poll-books ; I would have signed them but was arrested before I had an opportunity. The marshal told me he would wait until midnight if I would sign them, though he urged me to hurry and get ready to go.

There were some irregularities in that election, and I will state what they were. In the morning, when the polls were first opened, the first thing John Miller did was to get drunk. He is constitutionally a good man ; all I saw him do wrong was when a ticket was handed him he would open it, which I entered my protest against ; told him he had no right to open the tickets. I finally got him out of the chair and received the votes myself. It was afternoon when he gave me the seat ; he received a few votes after dinner. Miller held the ballot box ; sometimes I would call the names, sometimes my son, and sometimes Miller. Miller was sitting near the window ; a corner pane of glass was out of the window, where the tickets were received. Some of the time the ballot box was in his hand, and some of the time on his knees. The clerks sat about fifteen feet from the window.

Miller had his pockets full of tickets, and would hand them out to voters saying, " this is the ticket to vote." I objected to this ; and he said he wished to see if they were " sound on the goose." I stood up near the window part of the time ; my son sat near the clerks ; I went out some of the time during the day ; was not gone out long ; Miller said that the reason he opened the ticket was, " that he wanted

to see how they voted ; that some of them had pretended to vote his way, and he wanted to see if they were true ;" said " he wanted to go out and whip two or three ; that they were no less than tories and abolitionists ;" that they were descendants from the sneaking tories of the revolution. I was in a position to see a part of the time whether he put into the box the same ticket which was handed him or not, but did not see him make any change ; was out of the room a part of the time, as I have said ; no person was deterred from the polls ; I knew almost every man who voted ; we closed the polls at six o'clock, and opened them again the next day, but closed them without taking any votes ; the votes were not counted that night ; I think the clerks took charge of the poll-lists ; I do not know who signed the return, I did not ; was arrested before the returns were made out ; I do not know a young man by the name of Hunt.

Question by Mr. Ewing. Did you receive the vote of a young man not of age, and whom you knew not to be of age ?

Answer. I decline answering that question, but will answer in this way : I received no vote but what I conceived to be a legal voter ; I decline answering the question, as I do not believe the board have any right to ask the question ; you have no right to ask a question when the answer would tend to criminate myself.

Question. Did you receive the vote of Luke Moore, who lives in Missouri, knowing him to live in Missouri ?

Answer. That is a question you have no right to ask me ; will just state that there never was any such man voted at Delaware as Luke Moore, that I know of ; I don't think there is any such man as Luke Moore ; I have not examined the poll-books, but do not think he voted ; do not know a man by the name of Lucas Moore.

Question by Mr. Ewing. Did you see any votes polled that you considered to be illegal ?

Answer. I think the board has no right to ask the question.

The Chairman of the Board states : " That any person has the right to decline answering any question if he considers the answer tending to criminate himself.

Resumes. I did not see a single ticket put into the box except it was handed in by a voter ; I never saw a fairer election conducted in my life ; I think I recollect that the free-State vote was fifty-seven for State officers and members of the legislature ; I saw five men who I was told voted against the constitution who were from Missouri ; I was told that there were ninety-five votes polled against the constitution ; I know one man who voted at our polls by the name of Louis Moore ; he had lived at Osawatimie ; his family were over in Missouri ; children going to school there ; he said he was afraid they would kill him, as he had been out in the wars before ; I think I received his vote ; he told me that his wife and children were over in Missouri ; he was employed by me to chop logs ; has not done any chopping yet, but I think he will come ; I do not know where he was staying ; was not boarding with me ; he told me before the election that he had taken his family over in Missouri ; he used to live adjoining me ; I think he moved off last spring some time ; I do not know the names of any of the five men who voted against the constitution on

that day; I do not recollect who told me those men were from Missouri; they were pointed out to me by several persons; I cannot describe the persons pointed out; do not think I saw a person vote against the constitution; I was one of the framers of the constitution. I know a man by the name of William Hurt; he was one of the clerks of election; I do not recollect whether he voted or not; I believe that Louis Moore was at that time a resident of Kansas. The poll-books of Delaware precinct are in my possession; I have them in my pocket.

Question by Mr. Green. Will you let us see them.

Answer. I will if you will return them again as soon as you have examined them; I want to take them back with me. These poll-books which I give you are the poll-books of the election held at Delaware precinct on the 4th of January, 1858, for members of the legislature and State officers under the Lecompton constitution. I will leave the poll-books with the board if they will be returned to me again to-morrow. I think at that election there was a general turn out of all the voters of the precinct. There were one hundred and seventy votes cast at that election. I think there is not much change in the population of the precinct. The average vote is about the same as stated above.

G. B. REDMON.

GREEN B. REDMON, recalled:

I reside some two or three miles below Delaware, in Leavenworth county. Was at Delaware on the 21st of December, 1857, at the time the vote was taken upon the constitution; was in town all day; was about the polls almost all the time. I think there were two hundred and fifty-five votes polled on that day. I saw some people there who, I think, do not reside in Kansas; do not know that I ever saw any such persons vote; saw some people that I know to live in Missouri.

G. B. REDMON.

Shawnee Precinct.

No. 14. A. J. Harrison, (2d lieutenant 6th infantry.)

69. Oliver J. McFarland.

71. Charles Godfroy.

72. David W. Brown.

No. 14.

A. J. HARRISON, being duly sworn, deposes and says:

I was at Shawnee precinct, in Johnson county, Kansas Territory, on January 4, 1858. Was lieutenant of a company of United States troops stationed there. About one o'clock p. m. we were called into

town by the marshal. Colonel Titus, with one or two other men, was there. They had knocked down the keeper of the hotel. I was not acquainted with Colonel Titus before that time. He was there, with a two-horse buggy. It was said that he lived in Kansas City, Missouri. I do not think that I saw while there over fifty men. On our road there we saw very few settlers, except Indians. What the settlements are in other directions I cannot state. We were called upon again, about half-past five p. m., by the deputy marshal, stating that some Missourians had come over and were about to destroy the ballot box; that he wanted us to come immediately to town. I took some twenty men and went down. On my way there I saw four men on horseback coming from the town and making considerable noise as they came along. When I arrived at the town I could see but twenty-five or thirty men about, and no disturbance. I reported to the marshal, and he told me that the Missourians had concluded to leave, but asked that I would remain until the polls closed, which I did. We were stationed about one-half mile from town. We were stationed off from the road; could not have seen persons coming from or going to Missouri.

A. J. HARRISON,
2d Lieutenant 6th Infantry.

No. 69.

Oliver J. McFarland, being duly sworn, deposes and says, (February 13:)

I reside in Shawnee, Johnson county, Kansas Territory. I was at Shawnee on the 21st day of December, A. D. 1857, at the time the vote was taken on the Lecompton constitution. Do not think I was at the polls during the day. Was in a store about 100 yards from the polls. Have lived there since last June. Have helped to build up the town. There are some thirty houses there, of every description. I came there on the 9th day of last June. There were no houses there at that time, except the old Indian church. The town site is on the Shawnee Indian reserve. The township in which the village of Shawnee is situated is as thickly settled with the Shawnee Indians as any township on the reservation, I think.

The distance from Shawnee to Westport is about seven miles, and to Kansas City, by way of Westport, about eleven miles. The man who engaged me to come to Shawnee lived in Howard county, Missouri. I am from Boonville, Missouri. The town was built by a company consisting of Thomas Johnson and his son, Mr Houk, and some others, whose names I do not recollect. The houses are all occupied but one. There are fifteen families living there. There are twelve or fifteen men there over 21 years of age who have no families. They consist of mechanics, clerks in stores, and men otherwise engaged about town. I have been north of Shawnee as far as the Kansas river. Have been east to the Missouri State line, and through the township in a southerly direction. Do not know of but two houses

that are inhabited outside of the village of Shawnee and in the township I do not know of a quarter section of land about there but what has a foundation laid or house built upon it that is not claimed by the Indians. I know some three or four white men there who have married Indian women.

Question by Mr. Green. Can you tell us now how many men there are who are over 21 years of age residing in the town and in the voting precinct outside of the town?

Answer. I think I know some sixty white men in the precinct over 21 years of age. I think that the lands there are not subject to settlement yet.

Question. How many men did you see there on the 21st of December last—on election day?

Answer. I cannot tell exactly. I saw a good many men coming and going; some going through the town in an easterly direction, and some coming from Missouri. Saw some five or six in a company going towards Missouri before the polls opened, in the morning. I also saw some men coming from towards Missouri in small parties. Saw some men there whom I knew, from Missouri—five or six, I suppose. I should judge that there were some 200 men in town during the day; that is as near as I could come at the number. Saw a man from Westport, by the name of Carter, and one by the name of Ridley, in town. I know Mr. Danforth, who was a member of the constitutional convention; believe he lives in Westport with his family. I never knew him to live in Johnson county.

Alexander Johnson, Peter Behan, and A. Byrum were the judges of election on that day, (December 21st.)

Behan has moved to Missouri, Byrum is now in Missouri, and I believe Johnson has gone to Washington.

Behan said he moved to Missouri because he was afraid of being arrested; said that there was a writ out for him; did not say what the writ was for.

I think Colonel J. H. Danforth was there on the 21st December last.

[The poll-books were shown him by the board for the election of the 21st December, and he was requested to look them over and mark every man's name whom he knew to live in Shawnee, also those who resided in Missouri of the same name as those on the poll-list.]

I have examined these poll-books and find the signatures of the judges all correct. I have seen the signatures before of all but one, and believe this is the genuine return.

I find, on a careful examination, the names of forty persons whom I know. James Carter, J. H. Danforth, J. H. Hough, G. W. McKowan, H. T. Titus, and D. M. Barkley reside in Missouri. Six are Shawnee Indians; the balance of the forty names are residents of Shawnee precinct.

I find my own name there, but I did not vote.

The forty names that I have marked are all on the first half of the poll-books.

There are 753 names altogether on the list. After deducting the

six Missourians and the six Indians, I find 28 names of white persons whom I know to reside in that precinct.

I was at Shawnee on the 4th of January ; was appointed one of the judges of election for the election for officers under the Lecompton constitution ; was appointed by Peter Behan and Mr. Byrum, who were the other judges. The clerks were Mr. Godfroy and J. E. Harwood. Mr. Harwood resides in Westport, Missouri.

The polls were opened about 9 o'clock a. m., and closed about sunset ; we used a cigar box for a ballot-box ; had a piece of paper tacked on the top of the box, and a hole in the paper where the ballots were put into the box.

I have been shown by this board a copy of the poll-books for the election held on the 4th day of January ; the poll-books appear to be in the handwriting of J. E. Harwood, one of the clerks ; I recognized my name in my own handwriting below the certificate ; I do not recollect of seeing the certificate when I signed my name.

The poll-books and ballots were taken to Missouri that night without being counted ; J. H. Danforth and two other gentlemen, whose names I do not know, were there in a buggy and took the poll-books and ballots to Westport to count them ; none of the judges went with the gentlemen who took the poll-books ; Mr. Harwood went with them ; he was one of the clerks who lived in Westport.

The poll-books were made out in two columns of names with lines drawn between them, as they appear now, but I do not recollect whether or not each name was numbered ; they were not then fastened together but were on separate sheets of paper ; Mr. Harwood, one of the clerks, asked me to sign my name to the paper ; I think there were no names or writing on the sheet except the names of the other two judges when I signed it ; they wanted me to sign it in that way, as they said they were in a hurry to take them away ; I have never seen anything like the poll-books since I signed the blank sheet, until they were shown me by this board to-night.

There now appears a certificate, above the names of the judges, certifying to fifteen sheets of names of voters ; the sheets have been fastened together since the polls closed, and on the same sheet with this certificate, and above the certificate, is the names of eight voters, among the rest is my name ; I did not vote that day. One of the clerks (Mr. Harwood) asked me, after the polls closed, if I had voted, I told him I had not ; he said he would put down my name, that it would make no difference ; the clerks used pen and ink to record the names and the ruling was done in ink. This poll-book with my name, in my own handwriting, on the last sheet where I signed my name, is made out in ink, but the ruling on the two first sheets is done in ink, but the balance of the fifteen sheets are ruled with a lead pencil ; I did not see any pencil used that day that I recollect of.

I think there were not over three or four sheets when the polls closed. I did not authorize any one to write the certificate above my name certifying to fifteen sheets of names ; and am certain that there were not as many sheets when the polls closed.

I find on the third sheet of the poll-books the name of F. E. Bailey, occurring as the one hundred and sixty-third voter. I have looked

over all the balance of the 936 names on the list and cannot find one occurring after the one hundred and sixty-third name that I recollect of hearing called that day, except among the eight names on the last page above the certificate. Bailey voted late in the afternoon. There are 773 names occurring after the name of Bailey.

I recognize before the 164th name on the list forty names that I know; out of the forty, seven are Shawnee Indians, and three are residents of Missouri. I do not recognize any names on the list after the name of Bailey, except four on the last sheet. One of the four is a citizen of Westport; the other three are legal voters.

I am satisfied that the 773 names which occur after the name of Bailey were put on the list after the polls closed. The judges did not count the ballots that day. I have never seen them counted, nor never saw the tally-lists until I saw it before this board to-night.

Harwood had no authority from me to add any names on the list after the polls closed.

Mr. Henderson was at Shawnee in the morning; was wanting some one to take a letter to Oxford. Do not know whether he got any one to take it or not.

I think that the last 773 names on the poll-list are a forgery, and were put on there without my knowledge or consent, and without any ballots corresponding being put into the ballot-box.

The tally-list accompanying the poll-books before this board shows 842 majority for the democratic ticket. The democratic ticket did not receive any such majority.

O. J. McFARLAND.

No. 71.

CHARLES GODFREY, being duly sworn, deposes and says, (February 13:)

I reside in Shawnee township, Johnson county, Kansas Territory. I was clerk of the election at that precinct on the 4th of January, 1858, at the election for officers under the Lecompton constitution.

The polls were opened at about 9 o'clock, a. m., and closed at about sunset; the poll-books were kept on separate sheets of paper, and were not fastened together; the names were written in two columns, but were not numbered; lines were drawn between the columns of names. The poll-books were taken away after the polls closed. Colonel Danforth took them away; I do not know where he took them. I signed my name, before they were taken away, to a sheet of paper which had been signed before by the judges of election. There was no certificate written above where I signed my name at that time.

I have been shown before this board the poll-books for the election held on that day, with my signature, as signed by myself, on the last sheet of the list. There is a certificate written above the names now. I was the last person who signed the sheet; the three judges and the other clerk had signed the sheet before I did.

Frank Bailey voted late in the evening; I do not remember of recording any other name after that name. I went out of the room after Bailey voted, and did not return afterwards, until I came in to sign the poll-books. I find, on an examination of the poll-books, the name of Bailey occurring opposite the number 163.

I was formerly from Westport, Missouri. Mr. Harwood, who was the other clerk on that day, is a printer, and lives in Westport. He came to Shawnee on the morning of the election, on horseback, and went away after the polls closed.

I saw the poll-books the next day in Westport, Missouri; they were in a room over Colonel Boon's store. Harwood and myself were in the room. Colonel Danforth came in while we were there. Alexander Johnson was also there. I got there about 10 or 11 o'clock, a. m. Harwood was writing names on some poll-books when I went in the room; was writing names on the list.

Question by Mr. Green. Where was he getting those names from?

Answer. I was writing names on one poll-book; Alexander S. Johnson called out the names for me to write down. Alexander S. Johnson is a son of the Rev. Thomas Johnson, who lives at Shawnee mission. The names which Harwood was writing down were also called out by Johnson. He had a paper with names on, which he was calling off. The paper was the poll-lists for the vote on the constitution of the 21st of December; do not know for what precinct. The ballots were given to some one whose name was unknown to me after the polls closed. They were in a cigar box. I have never seen the ballots since. There were no ballots counted by us that day. I staid there about one hour, wrote some two or three hundred names, and then went back to Shawnee. We numbered the names as we wrote. At the time I left there were not as many as nine hundred and thirty-six names written.

I went to Westport on a mule. Harwood told me the night before to come and help count up the votes. I do not know whether the names which I was writing were for Shawnee poll-books or not, nor whether they were poll-books. I did not see the heading. The names which I wrote down on the poll-books the day after election were numbered; they were not numbered on the day of election. My impression was that they were for poll-books for the Kansas election, but whether they were for Shawnee precinct, or some other, I did not know.

There were names written on the list which we were writing on when I came into the room, but whether those were the names written by me the day before or not I do not recollect. Mr. Harwood was writing when I came in. He called off names to me for me to catch up with him. After I caught up with him, we looked over this list, headed December 21, and wrote some names; and then Alex. S. Johnson came in, took the list, and called off for both of us. One of the clerks in Colonel Boon's store came up into the room for a time, but did not write any names while I was there. When I went away I left Harwood in the room. Peter Behan, who was one of the judges of the election at Shawnee on the 4th of January, was at Westport the next morning. I met him when I came down stairs. I think he asked me how many names I had written down. I told him three or

four hundred. I did not see the Oxford poll-books that I know of. Heard Danforth say that they had not come to town yet; he was talking to Harwood at the time. I think Harwood asked him if they had come. Peter Behan appointed me one of the clerks. I know some fifteen who voted at Shawnee who lived in Missouri, but said they had claims in Kansas. Colonel Danforth remained in the room where we were writing down names some half hour. Pat Cosgrove came into the room a short time; came from another room. He did not look over the lists which we were writing on.

CHAS. C. GODFREY.

No. 72.

DAVID W. BROWN, being duly sworn, deposes and says, (February 13:)

I reside in Shawnee precinct, Johnson county, Kansas Territory; have lived there nearly ten months. At the time I went there the country was settled scarcely any. About the time of the election in January last I took considerable pains to learn the number of legal voters in Shawnee precinct, and made up an estimate that there were about one hundred and twenty, about eighty of which were white men; the rest were Shawnee Indians. Some of the citizens of the precinct, just before the election, had appointed a committee to find out, as near as they could, the number of voters, and they estimated there were about eighty white voters. I went to the polls at Shawnee early in the morning of the 4th January, and before the polls were opened. I remained there until after the polls closed. Most of the time I was near the ballot-box challenging voters whom I believed to be residents of Missouri; some of them I knew to be residents of Missouri. I saw several Missourians vote. I then commenced to take down a list of them on paper; and, when the judges saw me taking down these names, they refused to take the votes of those Missourians. I took down the names of about ten Missourians. I don't think there were more than one hundred and twenty-five votes given in that day, nor do I think there were one hundred and seventy-five men in town on that day, in all, that is, voters. I took particular notice of the last man who voted on that day. His name was F. E. Bailey; I knew him well. I have examined the poll-book of Shawnee for the election on January 4, 1858, just handed me by the board, and I find that name is the 163d on the list of names. A considerable number of men who voted before Bailey did were men from Missouri and Shawnee Indians who were not entitled to vote. I believe that nearly all, if not quite all, the names on that list that occur after Bailey's were fictitious.

D. W. BROWN.

KICKAPOO PRECINCT.

- No. 23. H. C. Fields.
- No. 29. Charles F. Laiblin.
- No. 31. John L. Thompson.
- No. 30. John Baker.
- No. 37. John Hill Spivey.
- No. 46. C. F. Currier.
- No. 49. George W. Purkins.

DELAWARE PRECINCT.

December 21, 1857.

- No. 19. James M. Churchill.
- No. 20. Sylvester Laning.
- No. 22. James E. Bruce.

January 4, 1858.

- No. 33. Marion Todd.
- No. 17. J. H. Noteware.
- No. 18. A. Sturgis.
- No. 19. James M. Churchill; recalled.

No. 23.

HENRY C. FIELDS, being sworn, deposes and says, (January 23:)

I am a resident of Leavenworth county, Kansas Territory; have lived there nearly three years. Was at the election held at Kickapoo, in said county, on the 4th day of January, 1848, for State officers and members of the legislature under the Lecompton constitution. I went there to keep an unofficial record of the names of those who voted at that precinct. Got there about 7 o'clock a. m. Saw Mr. Franklin, one of the judges of election, there. Asked him to permit me to take a seat inside of the room to keep an unofficial record of the voters. He said he had no objection, and did not think the other judges would have. He saw them and came back and said that they objected to it. That they had their own clerks of election and would not permit any other person to keep a record of voters inside of the room. Just before the polls opened I took my stand by the side of the window with book in hand, intending to keep a record outside. There were some fifty or sixty men, armed with guns, revolvers, bowie knives, and clubs, around the polls. Some of them crowded up to the window, and several of them swore that they would kill any man who recorded a name in that book. They tried to crowd me from the polls, but did not succeed. Two or three of my friends from Leavenworth City came to me and insisted upon my not trying to keep a record;

that if I did I would be killed. General Losee, of Leavenworth, was there to challenge voters. They swore they would kill any man who offered to challenge a vote. I gave General Losee the book. He tried to take down names, but they crowded him away from the polls, so that he could neither challenge nor take down names. The troops were stationed about 150 yards from the polls. The commanding officer refused to station them at the polls, although requested to do so in writing by the deputy United States marshal. I left there about noon, as it was impossible to do anything.

H. C. FIELDS.

No. 29.

CHARLES F. LAIBLIN, being duly sworn, deposes and says, (January 25:)

I reside in Kickapoo City, Kansas Territory; have lived there nearly three years. Am pretty well acquainted throughout the precinct. Am a brick mason by occupation.

Kickapoo City contains about 150 voters, and the entire precinct, I should think, about 400. Was at Kickapoo on the 4th of January, at the election. Was about the polls a short time early in the morning and again after noon. Heard some threats made against any person attempting to challenge voters. I think that during the entire day there were upwards of 400 persons in town, exclusive of the United States troops.

I have examined a paper in the possession of this board, purporting to be a copy of the Kickapoo poll-lists for the election held there on the 21st day of December, at the time the vote was taken upon the Lecompton constitution, and find seventy names there of men who I know to be legal voters, residing in the precinct.

I find the names of thirty-seven persons on the list who I know to be non-residents of the Territory, or not legal voters, as follows:

J. B. Blake, resides in Weston, Missouri.

Green Arnot, resides in Nebraska Territory.

J. T. Elkins, resides in Missouri.

H. J. Freeland, resides in Platte City, Missouri.

Wm. R. Gibson, resides in Weston, Missouri.

N. Jenkins, non-resident.

Wm. Jacobs, resides in Missouri.

Benj. Jacobs, non-resident.

L. W. Jacks, resides in Missouri.

M. O. Jenkins, resides in Weston, Missouri.

John McDaniel, resides near Weston, Missouri.

Thos. F. Marshall, non-resident.

John Murdock, resides in Missouri, Platte county.

Robert Murdock, lives in Missouri, Platte county.

John McDonald, lives in Missouri, Platte county.

John L. Murchant, lives in Missouri, Platte county.

C. D. Norris, lives in Missouri, Platte county.

Wm. L. Newman, lives in Missouri, Platte county.

Wm. L. Preston, non-resident.

Wm. Reynolds, lives in Weston, Missouri.

Wm. L. Ross, lives in Weston, Missouri.

Samuel Ross, lives in Missouri.

D. R. Ross, lives in Missouri.

James Thompson is not living; he died at Kickapoo on the 7th of September last.

Benj. Tracy left for Kentucky in July last, and has not been back since.

Robert Tracy left for Kentucky in July last, and has not been back since.

George Wells resides, I think, in Missouri.

Thomas F. Tracy, is about 13 or 14 years of age; lives in Kickapoo.

I do not know a man by the name of Jones living at Kickapoo; there are twenty-four of that name on the list. Do not know but two men by the name of Johnston; there are fourteen of that name on the list.

I do not believe that one-half of the names on the list are residents of the Kickapoo precinct.

C. F. LAIBLIN.

No. 31.

JOHN L. THOMPSON, being duly sworn, says, (January 25 :)

That he resides in Kickapoo precinct. Have lived there for about two years. Am well acquainted in that precinct. Have examined the poll-books as appearing before this board, and know that the statements made by C. F. Laiblin, in his affidavit before the board, are true.

JOHN L. THOMPSON.

No. 31.

JOHN L. THOMPSON, being sworn, says, (January 25 :)

I reside in Kickapoo City, Kansas Territory; have lived there about two years; I know nearly every person who lives there. Last May there were 375 voters according to the census taken by Mr. Hathaway and my own knowledge. The precinct was then the same as now, I think; there may be now four hundred or four hundred and fifty voters in the precinct. I was requested by Mr. Hathaway to assist him in taking the census of the precinct, but was deterred by threats that my life would be in danger if I did; was there on the 4th of January; was about the polls early in the morning; heard men say that there was a man there from Leavenworth, who wanted to take a list of voters,

and they said that if a man attempted to keep a list he would get his head broke. I did not vote; I went up to vote and asked for a ticket; a democratic ticket was handed me; I said that I wanted to see a ticket of the other kind also; they told me that abolitionists could not vote at that place.

JOHN L. THOMPSON.

No. 30.

JOHN BAKER, being duly sworn, deposes and says, (January 25 :)

I reside in Kickapoo precinct, Kansas Territory; have lived there since last May; am not very generally acquainted throughout the precinct; was there on the 4th of January, 1858; was about the polls a very little. I should suppose, by a rough guess, that there were not over four hundred persons in town during the day, exclusive of the troops. I did not vote for State officers; there was so much noise and loud talk about the polls that I did not care to go up, and I was convinced that the voting was unfair, and believed it would be thrown out, so did not vote. I have no knowledge of myself of illegal voting, as I did not go about the polls much; stood a few minutes about a rod from the polls; I heard men say that they would not be allowed to challenge there, nor keep a list of voters. I knew that there were not half as many voters as had been reported at other elections, which led me to believe that this would be unfair.

JOHN BAKER.

No. 37.

J. G. SPRYER, being duly sworn, deposes and says, (January 27 :)

I was living at Kickapoo, in Leavenworth county, Kansas Territory, on the 4th of January, 1858. Was clerk of the probate court; was there at the election of the 4th of January; there was considerable excitement about the polls in the morning; the excitement appeared to grow out of the attempt of some men from Leavenworth coming up there, as I understood, to challenge voters; the excitement was no greater than I have seen at other elections in Kansas. The people of Kickapoo appeared to be opposed to any one coming up from Leavenworth to challenge voters, but said they had no objection to people who were living in the township challenging; the feeling against having any one challenging voters was not general among the people about the polls. I was at the polls when they were first opened; remained there about ten minutes; went away and staid about an hour and a half; came back between 11 and 12 o'clock, I should think; was near the polls several times after that. I voted early in the morning; there was considerable of a crowd about the polls; did not see any one vote more than once, nor did not see any one vote under any other name than his own; did not see any one who had voted once go up to

offer another vote ; heard no person say that he had voted more than once ; saw nothing irregular in the conduct of the judges of election ; did not see any one that I knew to be a non-resident vote ; did not know every person that I saw. I did not see or hear anything at the election calculated to defraud the will of the people. The crowd about the polls were a noisy boisterous crowd upon the opening of the polls ; after that it was very quiet ; I saw some of the men armed ; noticed some people carrying clubs, which were too short for canes ; did not know what their object was in carrying them. I was at Kickapoo on the 21st day of December, 1857 ; did not go to the polls on that day. I am not well acquainted in the precinct outside of the town.

I went up there on about the 1st of November, and left nearly two weeks ago.

Mr. Elliott, who is one of the board of county commissioners, said that he did not think it was proper for men to come there from Leavenworth to challenge voters ; had no objection to free-State men who lived in the township challenging, but men who did not know the voters ought not to challenge. I saw the deputy United States marshal challenge one voter in the afternoon ; do not know whether the man who was challenged voted or not.

I have seen what purports to be a copy of the poll-books of Kickapoo precinct for the vote taken there on the 21st day of December, 1857 ; it has been shown me by this board.

I have seen on that list the names of James Buchanan, John C. Fremont, William H. Seward, Thomas H. Benton, John P. Hale, Horace Greely, G. W. Brown, E. Breckenridge, and Adam Bible. I have heard of the men whose names I have mentioned, but never heard of their being in Kickapoo.

JOHN GILL SPIVEY.

No. 40.

JOHN C. VAUGHAN, being sworn, deposes and says :

I was at Kickapoo on election day, January 4 ; I saw Thomas Ewing vote there at five minutes before 6 p. m. After he had deposited his ballot, two persons voted ; the third who attempted to vote was challenged by Deputy Marshal Cowell, and his vote was rejected. There seemed at this time an entire cessation of voting.

Just before the polls closed, I left to get my horse ; I was absent less than five minutes ; Mr. Ewing and Mr. Cowell informed me on my return that no vote had been cast during my absence. After my return, no one offered to vote until the polls closed at half-past 6 o'clock.

JNO. C. VAUGHAN.

No. 46.

C. F. CURRIER, being sworn, deposes and says, (February 1 :)

I reside at Leavenworth city, Leavenworth county, Kansas Territory; I was at Kickapoo precinct, in said county, on the 4th of January, 1858, at the election for officers under the Lecompton constitution; I reached there about 9 o'clock a. m., and left at about 4 o'clock p. m.; am chief clerk of the house of representatives of Kansas Territory.

When I reached Kickapoo, in company with several others, we proposed to the judges of election to permit us to place a man inside the poll room to challenge voters, and also to keep a record of the names of those who voted. They would not permit us to place a man inside the poll room, nor keep a record, or place a challenger outside the room. We then told them that if they would not permit any free-State man to challenge, or keep a record, we would be governed by any pro-slavery man whom we might select for that purpose from among their own party. They said they would not permit anything of that kind. One of the reasons we had for making this request of them was, that we had understood that Governor Denver had instructed the judges that should any request of that kind be made to them, they must submit to it.

There was quite a large crowd about the polls when they first opened; the crowd remained there until about 12 o'clock m., when they began to thin out a little.

After about three o'clock, and until the time I left, there were but very few about the polls—some of the time not more than two or three persons. I voted there just before I left.

I stood as close to the window as I could get, for the purpose of seeing how the voting was done. The window was crowded. I could not see any voting being done at that time, but could see that the clerks were constantly writing. I saw one man vote three times without leaving the window, and under three different names. The first name he gave, I think, was George S. Russell; the other two names I do not recollect. Saw another man vote twice without leaving the window. Do not remember the names he gave in.

These votes I saw taken in by one of the judges—Mr. Franklin—and saw them put into the ballot-box as the name was called out to the clerks. I saw two lads vote—one apparently about ten years of age, and the other about fifteen. I saw one man by the name of J. M. Calvert vote under the name of Michael Stokes; I recollected that name very distinctly, having had a man by the name of Stokes in my employ at a former time. That man is now living in Indiana. I was about the town all the time until near four o'clock, and during that time there could not have been more than two hundred and fifty men in town, exclusive of the United States troops.

The crowd about the polls during the day, until afternoon, were armed with clubs about two feet in length, and were violent in their denunciations of the "d——d abolitionists."

C. F. CURRIER.

No. 49.

GEORGE W. PURKINS, being sworn, deposes and says, (February 3:)

I reside in Leavenworth city, Leavenworth county, Kansas Territory. I am judge of the probate court, and *ex officio* president of the board of county commissioners, of that county.

I was at Kickapoo on the 21st day of December 1857; was holding a session of the county court there.

As I went into dinner at the hotel, a man, whose name I understood to be Willson, tapped me on the shoulder, and remarked to me that he had voted six times that day; and, said he, I will get my dinner, and go down and vote as many more if I can, before night.

Some time after this, do not know what hour, it was about dark, I was passing down the street with Major Hugh M. Moore; I told him I thought they were voting very late; he replied, that the judges had concluded that they would hold the polls open until about 12 o'clock at night, as a great many of the voters in that township had not yet had an opportunity to vote, many of them being employed all day about their various avocations.

I knew of no other election on that day, except the vote upon the constitution, for or against slavery. I think there might have been about 400 men in town that day. We held our court in sight of where the voting was going on, and could see every man who came up to vote; there could not have been more than 400; do not know how many men were in town during the night.

At about six 6 o'clock p. m. I was informed, do not recollect by whom, that there were about 610 votes polled at that time.

I have understood that the returns indicate 1,029 votes.

The usual time for closing the polls, according to the rule to which I have been accustomed in the States, was sunset. The statutes of this Territory require them to be closed at 6 o'clock, but the schedule of the Leecompton constitution prescribes no time.

I remained all night at Kickapoo; did not leave my room much of the time after supper.

About 10 o'clock at night, I heard a shouting in the street, and inquired the cause; was told that the vote had been announced, giving a vote of 1,017 for the constitution with slavery. I was not at the polls and did not vote that day.

I know that Horace Greeley and William H. Seward of New York, and Thomas H. Benton, of Missouri, were not in Kickapoo on the 21st day of December, and do not believe that James Buchanan was there. I have seen J. W. Martin's name twice on the poll-book; I do not think there is but one man of that name living in Kickapoo.

I am very confident that Wm. Franklin was confined to his bed with rheumatism on that day; I have seen his name appearing signed to the copy of the Kickapoo poll-books, as appearing before this board, as one of the judges of election at that precinct.

The man named Willson, alluded to above, I understood formerly resided in Doniphan; have seen what purports to be a true copy of the poll-books, and find the name of Willson occurring eleven times;

there were several boys there with whom I am well acquainted, who told me that they had been offered twenty-five cents for every vote that they would cast on that day; I told them that they were perfectly right in not voting; they said they had not voted; I do not know but one man in that township by the name of Willson; I have been all through the township, and am well acquainted throughout that section of country; am perfectly satisfied that five hundred is the extent of the legal vote that can be cast there.

GEORGE W. PURKINS.

THOS. EWING, jr., being sworn, deposes and says, (February 11:)

I was at Kickapoo on the 4th day of January, 1858, and was about the polls from the time they were opened, at 10 o'clock, until they were closed, at half past six, except for about three hours in the middle of the day; at a quarter past four o'clock the judges announced the vote as 467; at five minutes before six they announced it as 864. Between these two announcements there were not more than twenty votes polled at the utmost. I voted immediately after the second announcement. I had a right to vote there, being a resident of the county, and reserved my vote until about the last, that it might be afterwards ascertained how many votes were added to the list after the polls closed.

After my vote, there were but two or three ballots cast. I find 995 names on the poll-books of that election shown me by the board. My name occurs as the 550th voter, again as the 953d, and again as the 990th. I voted but once, and have never heard of any other person of my name in Kansas.

THOS. EWING, JR.

DELAWARE CITY PRECINCT.

December 21, 1857.

- No. 19. James M. Churchill.
- No. 20. Sylvester Laning.
- No. 22. James E. Bruce.

January 4, 1858.

- No. 33. Marion Todd.
- No. 17. J. H. Noteware.
- No. 18. A. Sturgiss.
- No. 19. James M. Churchill. "Recalled."

No. 19.

JAMES M. CHURCHILL, sworn, (January 22:)

I reside in Delaware precinct, Leavenworth county, Kansas Territory. Was there at the time of the election on the 21st of December. Was one of the clerks of election on that day. The judges of election were James Bruce, John Miller, and William Redmon. There were 255 votes cast; I am very well acquainted in that precinct; there were not

near all the voters of the precinct in town on that day ; I saw a good many of my acquaintances in Platte county come over and vote for the constitution ; there where some forty or fifty, I should think ; John Miller received the votes and cried out the names to the clerks ; there were a number of John Miller's acquaintances from Missouri voted ; he knew they were from Missouri when he took their votes ; I think the other judges knew that men voted from Missouri ; I remember the names of William Fox, James Fox, Benjamin McKenzie, some of the Broadwell boys, and Mr. Jones, who I knew to live in Missouri. If I had the poll-lists I could point out a good many names of Missourians who voted ; I voted for the constitution.

JAMES M. CHURCHILL.

No. 20.

SYLVESTER LANING, being duly sworn, deposes and says, (January 22 :)

I reside in Leavenworth city, Kansas Territory ; was at Delaware precinct on the 21st day of December, 1857 ; saw a man go up to the window and vote, giving the name of William McAlexander—I know that McAlexander has been dead six months ; saw Mr. Walker, from Platte county, Missouri, vote ; it was the opinion of some Platte county lawyers that every man who was in Kansas on that day was a voter ; McAlexander lived in Platte county in his lifetime ; I saw a printed paper in Platte county, stating that every man who was in Kansas on that day was a legal voter.

SYLVESTER LANING, *M. D.*

No. 22.

JAMES E. BRUCE, of lawful age, being duly sworn, says, (January 23 :)

I live in Delaware city, Leavenworth county, Kansas Territory. I was a judge of the election of 21st December, 1857, at Delaware city ; do not recollect the number of votes polled. William Redmon, John Miller, and myself, were the judges of that election ; James Churchill and William Hurt the clerks. The poll-books were left in charge of Mr. Miller ; I have not seen them since. Cannot say whether there were any non-residents voted ; only one was challenged ; a good many men I knew to have been living in Platte county voted there then ; cannot say whether they were then residing in Kansas or not ; these men had families in Platte county when I knew them there ; my impression was, that any one had a right to vote, unless he was challenged by some one outside ; and that the judges could only swear a man to support the Constitution of the United States, the Kansas-Nebraska bill, and the Lecompton constitution, if adopted ; and that they could not reject his vote on the ground of non-residence, unless challenged by some one outside. I did not know half the voters to be residents of Kansas, yet they all might have been living here, for all I know. Mr. Miller took in the votes.

JAMES E. BRUCE.

No. 33.

MARION TODD, being duly sworn, deposes and says, (January, 26:)

I reside in Leavenworth county, Kansas Territory, about six miles southwest of Leavenworth city, at a precinct known as Todd's School-house; was there on the 21st day of December, 1857. The judges of election were B. Frazier, M. Sloan, and S. May; the clerks, Mr. Spaulding and Green Todd. I think that there were forty-nine votes polled on that day. I saw no irregularities at that election.

Was at Delaware precinct on the 4th of January, 1858; was there while the polls were open. Mr. Miller was one of the judges of election; he received my vote; he seemed to be much intoxicated that day.

While I was there a man by the name of Jacks came up and voted. There was some dispute about his residence—whether it was in Kansas or Missouri; I think his name was erased from the poll-books.

I was one of the commissioners appointed to conduct the election in this county. I received the poll-books from Delaware precinct and gave them to Mr. Deifendorf. Did not receive the returns from Kickapoo precinct or Delaware Crossing. The returns from Delaware precinct were signed by the judges and clerks of election. Mr. Miller, G. B. Redmon, and William Redmon, were the judges of election. Miller left before the polls closed, and some one else took his place; I do not remember what his name was. The poll-books were signed by some one there and delivered to me there before I left town on the 5th, the day after the election.

I do not think that G. B. Redmon or Mr. Miller, either of them, signed the poll-books. William Redmon and the man who was appointed to take Miller's place signed them.

I thought there was a tolerable fair turn out on that day of the voters of that precinct.

I was about the polls some after dinner.

I do not know a man by the name of A. B. Miller living in that precinct. I know A. B. Miller, of Leavenworth city; did not see him there on that day; would have been very likely to have seen him if he had been there; I have seen his name on the poll-books, as shown me by this board.

MARION TODD.

No. 17.

J. H. NOTEWARE, sworn, (January 23:)

I was at Delaware precinct at the election on the 4th of January, 1858. I reached Delaware between 9 and 10 o'clock a. m. I went up to the polls, saw a man by the name of Miller acting as judge of election; could not see the ballot-box when I first went up. Miller sat by the window to receive the votes; I saw the ballot-box then, he was holding it between his knees, had his left hand full of tickets; from what I could see of him, I am satisfied that he would change the tickets. He would open the tickets as they were given him, and would hold them out of sight of persons outside. About the close of

the polls, at noon, some twelve men rode up on horseback, and two of them handed in their tickets; one of the clerks said he would not receive any more votes until after dinner; these men came back after dinner and voted; their tickets were received, without opening them, by the judges; I was at this time standing where I could see within the window. Mr. Bonnell came up to me and asked the reason why I was there; I told him I was an American citizen, a voter, and that I had authority to stand there from the deputy marshal; he said, "it looks damned suspicious." At this time Miller got out of votes, and called on Bonnell to ask Todd to come up; Todd came up, the judge whispered to him and said he wanted some more tickets. Todd hurried and brought them, slipping them in sliily at the window; the judge then got up and said: "I will be God damned if I will be watched by any man!" and said to Mr. Bonnell, the troops are stationed here to watch the polls and not this man. Miller appeared much intoxicated; he called on Bonnell to bring the troops and take me away, and said to me, "you had better be leaving here God damned quick; I am judge of this election, and will not be watched by any man." Bonnell said to me, "you had better be getting away from here;" there were several of his crowd about him, and as I did not consider myself safe, I went to my buggy to start for home. The deputy marshal came to me and asked me to go back and stay at the polls, and I should be protected; I did not go back. Came to Leavenworth.

J. H. NOTEWARE.

No. 18.

ANDREW STURGIS, being duly sworn, says, (January 22:)

I reside at Delaware precinct, Leavenworth county, Kansas Territory; have resided there about one year; was there at the election on the 4th of January, 1858. I heard Louis Moore say that he had voted, and that he lived in Missouri. He told me that he lived in Missouri. I voted and went away; afterwards came back to the window, where I could see within the room. Mr. Bonnell came up and shoved me away from the window. Marion Todd followed me away, saying that I ought to be killed. Soon after dinner, McLane, Mr. J. Todd, myself, and Mr. English were standing by the window. Miller, the judge, handed a ticket to Mr. McLane. The ticket was handed back to the judge, when he cried out a name different from the name of any one who was near the window.

A. STRUGIS.

No. 19.

JAMES M. CHURCHILL sworn, (January 23:)

I reside in Delaware precinct; was clerk of election there on the 4th of January, 1858. William Hurt was the other clerk. John Miller, William Redmon, and G. B. Redmon were the judges of elec-

tion. John Miller had tickets in his hand. He would call out to voters outside, "Here is the ticket to vote." He had his whiskey inside the room. He was drinking pretty freely, and cursing and swearing to some people outside. I told him that unless he kept more quiet I would resign. The name of J. B. McCullum appears on the poll-books. He is a boy. The only person I know of the name of McCullum is a boy. The name of A. B. Miller also appears. I do not know of any such person residing there. I know A. B. Miller, of Leavenworth; did not see him there on that day; would have been likely to have seen him if he had been there. The name of W. D. Hurt appears on the list. He was a clerk of election. I do not believe he is twenty-one years of age. I saw John Miller open tickets that were handed in at the window. Miller left before the polls were closed. He did not sign the poll-list. I did not see Miller deposit tickets which were handed him in any other place except the ballot-box. Saw tickets scattered about on the floor. I did not look to see what sort of tickets they were. I told Miller, along in the afternoon, that he was to be arrested. He left immediately, and has never been back, to my knowledge. This was the fairest election we have ever had in Delaware. The name of Mr. Jacks which appears on the poll-list was written during my absence. When I returned it was scratched out. Mr. Jacks lives in Missouri.

JAMES M. CHURCHILL.

LEAVENWORTH CITY.

- | | |
|--------------------|---------------------|
| 1. L. W. Jones. | 4. J. R. Whitehead. |
| 2. W. H. Cole, jr. | 5. L. W. Jones. |
| 3. L. J. Eastin. | |
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No. 61.

LOTON W. JONES, being sworn, deposes and says, (February 10:)

I reside in Leavenworth city, Leavenworth county, Kansas Territory; was there on the 21st day of December, A. D. 1857; was one of the judges of election at that place for the vote upon the Lecompton constitution. Colonel Clarkson and Daniel Scully were the other judges. There were some persons offered to vote that day, who were challenged, and their votes rejected on the grounds of non-residence.

At about 3 o'clock p. m. some one came into the poll-room, and said that the free-State men were forming on Delaware street, and were going to break up the polls. There was a good deal of excitement created by the news, and after a time a company of men came up, commanded by Mr. Dickson. The clerks got out at the back door with the poll-books; the judges remained in the room. The crowd that came up were armed with muskets. During the disturbance they pointed their muskets towards the polls. They finally marched away. The United States troops arrived about this time, and took position near the polls. The parties who had left the polls about this time marched down to the river; I inquired what was going on, and

was told that they had marched down to the ferry boat, and had taken possession of the boat to prevent Missourians from coming over.

The number of votes polled that day was 256. I received my appointment as judge from the other two judges. I think the returns were given to Deifendorf after the election.

LOTON W. JONES.

No. 60.

WILLIAM H. COLE, jr., being sworn, deposes and says, (February 10:)

I reside in Leavenworth city, Leavenworth county, Kansas Territory; have resided there about six months; I was there at the time the vote was taken upon the constitution, on the 21st day of December, 1857; was at the polls pretty much all day; I did not see any one vote whom I knew not to be residents of the Territory; I saw a great many challenged on that day, on the grounds that they were residents of Missouri; some of them I knew to be residents of Kansas, and all that I saw challenged swore that they were residents of Kansas; almost every person who came up was challenged, for a time. I saw a party of about 100 men, armed with muskets, &c., march down to the ferry-boat. I was afterwards sent for by Eli Moore to come and defend him; that he had been arrested for voting, and wished counsel. I started to go, but could not get through the crowd to where he was. I saw one person, Mr. Brown, arrested by Deputy Marshal Anten for voting illegally; he was afterwards discharged by proving his residence to be in Kansas. I was on the top of the bank of the river, and saw, on the opposite bank of the river, a number of horses tied to the trees—my impression is that they were saddle horses. The vote that day was near three hundred, I think. I think the voting was fairly conducted. I do not think that both political parties voted on that day. I saw some few men who voted the republican ticket at the last election vote upon the constitution. I understood that the republican party had resolved not to vote at that election. There were challengers of both parties there pretty much all day. There was a difficulty occurred between Mr. Parry and Colonel Payne; they drew pistols upon each other; I ran between the two and separated them; Payne left soon after. I understood that the difficulty grew out of Mr. Parry's challenging some one, or challenging Mr. Payne. Some few minutes after some three or four hundred armed men made a demonstration against the polls. Captain Dickson said to the men: "Don't any one disturb the polls, let them go on." The judges and clerks of election made arrangements to close the polls. I did not see any act of violence committed. The judges of election resumed business. Some of the armed body levelled their guns at the crowd on top of the hill, but as soon as Mr. Dickson spoke they marched off and everything went off quietly again. When they first came up I was afraid they were intending to commit some violence, but afterwards understood that they were merely parading around after taking some guns from a warehouse and arresting some alleged Missourians.

WILLIAM H. COLE, JR.

No. 27.

LUCIAN J. EASTIN sworn, deposes and says, (January 25 :)

I reside in Leavenworth city, Kansas Territory ; am editor of the Kansas Herald ; have been the editor over three years of that paper ; have never seen the returns of Delaware Agency for the election held at that precinct on the 4th day of January, 1858 ; was in Leavenworth city on the 4th of January, 1858 ; saw nothing at that election calculated to defraud the will of the people ; was here on the 21st of December, 1857 ; saw nothing there at that election tending to defraud the will of the people. The statement made in my paper of the 9th of January, 1858, was founded upon mere rumor. I understood then that the vote of Wyandott would give a democratic majority of five, and it was reported that Delaware Agency would poll a vote of one hundred and fifty, all democratic votes. I think I told Mr. Henderson once, soon after the election, that we had lost the county. He told me he thought not. Mr. Deifendorf was one of the commissioners appointed by Calhoun to take charge of the election returns in this county. I do not know that he has ever given me a statement of the result of the election in this county. I do not now remember who the other commissioners were. Mr. Deifendorf's house is in this city. I do not now know where he is. He has been absent during the past four days.

LUCIAN J. EASTIN.

No. 25.

JAMES R. WHITEHEAD, being duly sworn, says, (January 25 :))

I was in Leavenworth city on the 4th of January, 1858 ; was at the polls in the evening ; should not think more than thirty minutes ; saw a great crowd about the polls ; endeavored to reach the window or door, I did not see which, but could not do so conveniently, without waiting my turn, which, in all probability, would have been an hour. I did not vote ; did not see any fraudulent acts or doings which would tend to affect the result of the election. I paid no attention to the voting. I paired off with a good free-State man.

JAMES R. WHITEHEAD.

No. 61.

LORON W. JONES, being duly sworn, deposes and says, (February 10 :))

I reside in Leavenworth city, Leavenworth county, Kansas Territory ; was one of the judges at the election of the 4th of January, 1858, for the election for officers under the Leecompton constitution. Colonel Clarkson and Daniel Scully were the other judges. There were nearly 1,500 votes polled on that day. There were between 200 and 300 votes polled for the democratic candidates, and the balance for the

free-State ticket. My impression is, that there were some few challenged, on grounds of non-age, and, I think, two or three rejected. I did not see or know of any fraudulent voting at that election. The understanding among the judges was, that the returns were to be given to Mr. Deifendorf. I do not know of any irregularities at the polls, or any unfairness in the election. I saw a good many strangers there. Did not see the Delaware Agency returns for the election on that day until I saw them to-day before this board. I am acquainted at Delaware Agency; have been down there a number of times. I should not think that at Delaware Agency precinct that there were more than forty voters there, unless the Wyandott Indians, who were citizens, voted at that precinct, instead of voting at Wyandott precinct. I should think that at that precinct there are forty voters, counting those who are working for the Indians, and who have married Indian women, together with those who are selling goods there. I have been down there since the election; saw Munday there; he said that people had been there to arrest the judges of election, without writs, and he did not care to be arrested. I did not learn from him the vote of that precinct.

LOTON W. JONES.

PORT WILLIAM.

1. Bradley.

2. Turner.

3. Stephens.

No. 35.

H. C. BRADLEY sworn, (January 27 :)

I reside at Port William precinct, Atchison county, Kansas Territory. Was there at the election on the 4th of January, A. D. 1858. Martin Bland, Wm. Turner, and Benjamin Bean were the judges of election. There were four clerks, who kept a list of the voters for members of the legislature and State officers under the Leecompton constitution—Messrs. Stephens, Carter, Lester, and the other name I cannot recollect. One of the clerks (Mr. Stephens) left just about sunset, and I took his place. An election was held at the same time for a member of the territorial legislature, to fill a vacancy occasioned by the resignation of Mr. Miller. The judges of election received the ballots for both the State and territorial officers to be elected, and put them in the same box. There were between 140 and 160 votes polled. The judges of election canvassed the votes after the polls closed. I have lived in that precinct since June, 1854; am pretty well acquainted in the precinct. I think there were some thirty or forty free-State votes polled, and the balance were democratic votes.

I saw two men there who resided near Iatan, Missouri. Did not see them vote. Did not see any person vote twice, or offer to vote twice. I staid there until the ballots were counted and the poll-books signed. I signed the poll-lists for the election to fill vacancy in the territorial legislature. Did not sign the other returns. The judges

and clerks of election had voted heretofore pro-slavery. The judges who held the election were appointed by the county court

Mr. Lester was taken sick, and left about the same time Mr. Stephens left. Stephens signed the poll-lists before he left.

I was sworn in after Stephens and Lester left. The judges of election asked me to act as clerk. I objected, on the grounds that the polls were about closed, and that I had acted as clerk a number of times and had never received any pay for it. The judges said that some more voters had come in and wanted to vote. There were some four or five of them; they resided down about Kickapoo. James Adkins was one of the party; he resides near by Port William, in Atchison county. The balance of the party I did not know. They said they lived down near Kickapoo. I had never seen them before. Kickapoo is some six miles from Port William, in another county. There was a space of several leaves between the last name that appeared on the poll-lists and the place where Mr. Stephens signed the poll-list. Lester's name was not signed on the certificate at that time.

There were some votes taken after Stephens left, and were written between the last name which he had recorded and the certificate which he had signed. Mr. Stephens had left before those names were put on. I certified to the correctness of the whole poll-list. As well as I recollect, there were some four or five names recorded after Stephens and Lester left.

I had never seen the men who voted, that I know of. One of the judges, I think, challenged one or two of them, but they were not sworn. He asked them if they were citizens of the Territory. They were permitted to vote. Mr. Lester had a drunken fit, which was the cause of his leaving the polls. There were some six pages left blank between the last name appearing on the poll-list and the certificate; and as the names were written, one upon each line, there could have been about twenty-eight names written upon each page between the certificate and the last name, which I had written on the list. I do not know that any names were ever written in the blank space after the certificate was signed. I do not recollect the last name which I wrote on the list. As near as I can recollect, it was the name given in by one of those men who lived near Kickapoo.

There was no reason given by the judges for having the certificate written so far from the list of names. The poll-books were made out with the heading, and with the certificate attached, before I went in to act as clerk. I think that is the usual form to have the books made out by the court before the polls were opened. I was clerk there at the election on the 21st of December, 1857, and then the sheriff brought down the poll-books from Atchison, made out in that way. I never heard that there were any names added to the poll-books of the 4th of January after they were signed.

H. C. BRADLEY.

No. 41.

WILLIAM TURNER, being duly sworn, deposes and says, (January 28:)

I reside in Atchison county, Kansas Territory, about $1\frac{1}{2}$ mile from Mount Pleasant. Was judge of the election at Port William on the 4th day of January, 1858.

I saw no one vote on that day whom I knew was not a resident. One man, Jonathan Sapp, voted early in the day and again late in the afternoon; his name was put down by the judges, but on examining the poll-list we found that he had voted before, and then had his name erased from the list. There were no Missourians who voted while I was in the room, nor no one under 21 years of age. There were one or two who offered to vote, but their votes were rejected. One man (a free-State man) offered to vote. The other judges wanted to make him swear to support the Constitution, but finally they consented, after I had opposed them, to permit him to vote. I cannot say whether he voted or not. Just before night I was tired and wanted to adjourn, but the other judges wanted to hold open a while longer. The boys were getting tight out of doors. One of the clerks was also tight. I left then; one of the clerks left also. I signed the books the next morning. Do not know who voted after I left. I certified to the correctness of the whole return. There were about a hundred votes, or a little more, polled up to the time I left. There were votes polled after I left, but when I signed the returns I did not look to see who had voted, but supposed the judges had it fixed up right. There were some fifteen or twenty voters living in the bottom below there, who had not voted when I left. They were down at Kickapoo, and had sent up word to have the polls kept open until they came up to vote. I do not recollect how far from the last name on the poll-list the certificate was written for the judges to sign. I think the certificate was not written out before the polls opened, but was written by one of the clerks after I left. I do not remember the precise number of votes polled, but it appears to me that it was between 140 and 150.

WILLIAM TURNER.

No. 34.

GEORGE H. STEPHENS, being sworn, deposes and says, (January 27:)

I reside at Port William precinct, Atchison county, Kansas Territory; was clerk of the election at that place on the 4th day of January, 1858. I think there were about 140 votes polled at that election. I did not assist in counting the votes; do not know how many democratic votes were polled. The election which I was clerk of was to elect a member of the territorial legislature to fill a vacancy caused by the resignation of Mr. Miller. There were two candidates running for the office; their names were A. Elliott and Mr. Badger. The

election for State officers and members of the legislature was held in the same room, and the same judges of the election were receiving the votes for both the State and territorial officers. Another set of clerks, besides myself and Mr. Carter, kept the poll-lists for State officers and members of the legislature. I saw two men there who were non-residents; did not see them vote. The judges of election were William Turner, Benjamin Bean, and Martin Bland. The clerks were Jesse Carter and Woodford Lester, the other name I do not recollect. The names of those who voted for State officers and members of the legislature were recorded by four clerks. I saw no illegal voting; no man attempting to vote twice. Did not see the judges open tickets which were handed them.

GEORGE H. STEPHENS.

MISCELLANEOUS.

L. A. Maclean.
Complaint of board.
Search warrant.
Sheriff's return.
McLean's protest.
Testimony before probate court.
Order of court.
Samuel Walker.

N. B. Brooks.
Wyllis C. Ranson.
Samuel J. Jones.
G. W. Deitzler.
Governor J. W. Denver.
J. Sabin.
S. C. Pomeroy.

No. 42.

L. A. MACLEAN, being duly sworn, deposes and says, (January 30:)

I reside in Lecompton, Douglas county, Kansas Territory; am chief clerk of the surveyor general's office. The election returns for the election held in this Territory on the 4th of January, 1858, were received at this office. The returns from the different precincts were not opened as they were brought into the office. Some three or four precincts sent in their returns already open, but were sealed up in presence of the persons who brought them, and the name of the bearers written upon them. Do not know that the returns from Kickapoo, Oxford, Shawnee, or Delaware Crossing were sent in open. Do not know whether they were sent in at all or not. When the returns were sent in they were deposited in Governor Denver's safe until they were to be opened by General Calhoun. After he had counted them they were again tied up and deposited with me. I sent them afterwards, some seven or eight days, by a messenger from Platte county, Missouri, to General Calhoun. Do not remember the name of the messenger who took them. He did not bring a letter from Calhoun. It was about the 19th or 20th instant that those returns were sent to Calhoun.

The message was, that Calhoun wanted all the returns which had been opened sent over to him. I have received a letter from General Calhoun, from the hands of Mr. Ewing; the letter was dated the 17th of January. The purport of it was, that I should let Mr. Ewing see the election returns. The letter also states that Leavenworth is last, (referring to Leavenworth county.) There was no reference made by the messenger that Calhoun had sent such a letter by Mr. Ewing. He did not give a receipt for the returns.

The counting of these returns alluded to was done in presence of the speaker of the house and the chairman of the council of the territorial legislature, Mr. Smith and Mr. Marshall, candidates for governor, and some others.

I had other returns in my possession at the time that the messenger came from General Calhoun—one from one precinct in Riley county, and a letter from Grasshopper Falls; do not know whether the letter was returns or not. Since that time I have received returns from one precinct in Marshall county, and returns from one precinct in Breckenridge county.

The returns from Marshall county show a majority of five votes for the democratic ticket, with the exception of governor; the democratic majority for governor was some more than five.

I presume the return from Breckenridge county, alluded to, is from the entire county. I understand the vote from that county to be in the neighborhood of two hundred free-State majority.

The return from Riley county, alluded to, gave a majority of some ten or twenty for the free-State ticket. Those are all the returns received since the votes were counted by Calhoun, as alluded to above.

I was at Lecompton on the 4th of January, 1858. I used all the efforts I could, previous to the election, to secure a democratic triumph. Do not recollect of writing any letters on that express business, except it was in reply to a letter from Mr. Carr, of Atchison county, in relation to some tickets. Did not send any messengers to any part of the Territory. I know of Mr. Marshall sending one to Fort Scott. Do not know who the messenger was. Do not know of any messenger having been sent to Johnson county. Do not know of any one who resides in Lecompton being absent on election business before election day. I am a member of the county democratic committee; am chairman of that committee; am not a member of the executive committee for the Territory. Do not know where they met before the election, but think they met in Leavenworth. Mr. Samuel J. Jones is a member of that committee. Do not recollect of his being away from Lecompton for a week before election. Calhoun left Lecompton the day before Christmas. I think he was about Leavenworth until after the election.

Mr. Boling was over to Leavenworth a day or two just before the election. Do not know of any messenger being sent to Delaware Crossing; never heard of Delaware Crossing or Port William until after the election. I heard of Delaware Crossing before the counting of the votes at Lecompton. I heard that Henderson was arrested in connexion with the Delaware Crossing return. I heard that there were some twenty or thirty votes polled at that precinct, and that

Henderson carried them to Leavenworth and changed them to several hundreds; this was from common report. I know nothing about it except by rumor. Calhoun said that he had not received those returns at the time he counted the votes from other precincts at Leecompton. I believed that the returns from Leavenworth county were not in at the time Calhoun came over from Leavenworth to count the votes. He said to me that the returns from that county were offered him at Leavenworth, but that he would not receive them there; this was the day before they were counted. I think they must have come over by mail. Mr. Boling and Mr. Marshall came over with Calhoun.

The returns from Johnson county came by mail. I heard Calhoun say that there were some irregularities in the votes of one precinct; the difficulty was, that there was only a list of the names of the voters and the number of votes polled, but did not state for whom they voted; those returns only counted up some ten or twelve votes.

I heard him say, also, that there were elections held in some precincts where the judges were not appointed by the commissioners appointed by him, and have since seen a circular sent over by him requiring the commissioners to send in a list of the judges appointed by them. Do not know why he wished a list of the judges of election.

I do not know whether all the returns from Johnson county were sent over by mail or not; the package, I know, was a large one. Do not know whether the returns from Lexington were in the package or not; know they were received several days before they were counted.

Correction.—General Calhoun left Leecompton a day or two before the 21st of December, instead of the day before Christmas, as stated above.

L. A. MACLEAN.

TERRITORY OF KANSAS, }
County of Douglas, } ss.

To the honorable the Judges of the Probate Court of Douglas county:

Your complainants, Henry J. Adams, Dillon Pickering, E. L. Taylor, J. B. Abbott, and Thomas Ewing, jr., represent to your honors: That they, with H. T. Green and Ely Moore, constitute a board of commissioners under the acts of January 14, January 18, and January 22, 1858, whose duty it is to investigate the frauds committed in this Territory at the election on the constitution of 21st December, 1857, and at the election for officers under it, of 4th January, 1858.

That said board, under said acts, have the right to the possession of the election returns which have been sent by the judges of the said elections at the several precincts in this Territory to John Calhoun, the president of the convention, so long as the possession of them may be necessary for the purpose of such investigation.

That said John Calhoun, the custodian of said returns, is absent from this Territory, and beyond the process of the board.

That L. A. Maclean, a resident of Leecompton, and the chief clerk in the office of said Calhoun, has testified before the board that said

Calhoun left the said returns in said Maclean's possession and custody, and that, subsequently, about the 18th or 19th of January, 1858, a person, whose name was to him unknown, called upon him and stated that he had been sent for said returns by John Calhoun; and that he, said Maclean, delivered said returns to the said messenger, and has not since had possession or custody of them.

That they have been informed, and verily believe, that said returns have been stolen or embezzled, and that they are now concealed in or about the building in which is the office of the surveyor general at Lecompton, or in or about the building adjacent thereto; and they ask that a search warrant be issued by your honor directing the sheriff of this county to take said returns from their place of concealment and bring them before your honor; and that said returns may be delivered to this board for examination, and then returned to such person as may appear to have authority to receive them.

HENRY J. ADAMS,
THOS. EWING, JR.,
DILLON PICKERING,
JAS. B. ABBOTT,
ENOCH L. TAYLOR.

Sworn to and subscribed before me, this first day of February, A. D. 1858.

[L. S.]

JOSIAH MILLER,
Judge of Probate.

I, Josiah Miller, judge of probate in and for Douglas county, Kansas Territory, do hereby certify that the foregoing instrument of writing is a true copy of an original bill of complaint now on file in my office, presented by Henry J. Adams and others, requesting a search warrant for certain embezzled election returns.

[L. S.]

JOSIAH MILLER,
Judge of Probate.

FEBRUARY 12, A. D. 1858.

COUNTY OF DOUGLAS, }
Territory of Kansas, } ss.

The Territory of Kansas to the Sheriff of Douglas county, greeting:

Whereas it appears to me, Josiah Miller, judge of probate in and for the county of Douglas, that the following goods and chattels, to wit: the election returns of the several precincts of an election held in this Territory, on the 21st day of December, A. D. 1857, on the constitution framed at Lecompton; and also the returns of the several precincts of an election held on the 4th of January, A. D. 1858, for officers under the constitution, were, on or about the 18th or 19th of January, A. D. 1858, by some person or persons feloniously taken, stolen, carried away, embezzled, and secreted from the custody of the proper authorities and from the proper place of deposit in the city of

Lecompton, in the county aforesaid; and whereas Henry J. Adams, Dillon Pickering, E. L. Taylor, J. B. Abbott, and Thomas Ewing, jr., members of the board of commissioners to investigate election frauds, do declare on oath, that said board have the right of possession of the said returns for the purpose of their investigation, and that they truly believe that said election returns are now concealed in or about the building in which is the office of the surveyor general in Lecompton, county aforesaid, or a building adjacent thereto. These are therefore to command you, in the name of the Territory of Kansas, with the necessary and proper assistance, to enter in the day time the said building and adjacent premises in which is the office of the surveyor general in Lecompton, county aforesaid, and also the buildings and premises adjacent thereto, and thus diligently search for the said goods and chattels; and if the same or any part thereof be found upon such search, that you bring the goods so found forthwith before me, to be disposed of and dealt with according to law.

Given under my hand and seal of court this 1st day of February, [L. s.] 1858.

JOSIAH MILLER,
Judge of Probate.

I, Josiah Miller, judge of probate in and for Douglas county, Kansas Territory, do hereby certify that the foregoing instrument of writing is a true copy of an original search warrant issued from this court for the recovery of election returns, February 12, 1858.

[L. s.] JOSIAH MILLER,
Judge of Probate.

I, J. L. A. Maclean, chief clerk of the surveyor general's office at Lecompton, hereby solemnly protest against the execution of the above writ, this the 2d day of February, 1858.

L. A. MACLEAN.

Executed the within warrant (not searching only the buildings within described) by removing a pile of wood situated on the premises herein described and adjacent to the office of the surveyor general, and by digging from under it a box buried in the earth about eight inches, and supposed to contain the election returns herein described; which box is herewith delivered in open court without having been opened by any person, this 2d day of February, A. D. 1858.

SAMUEL WALKER,
Sheriff of Douglas County, K. T.

I, Josiah Miller, judge of probate in and for Douglas county, Kansas Territory, do hereby certify that the foregoing is a true and correct copy of the return of the sheriff of said county upon a search warrant issued from this court for election returns, which is herewith attached, February 12, A. D. 1858.

[L. s.] JOSIAH MILLER,
Judge of Probate.

J. W. DENVER, being duly sworn, testifies as follows:

I have examined a portion of the papers taken from the box in court. I have seen the same papers before, about the 12th or 13th of last month, in Lecompton. They were then in possession of John Calhoun; opened by him in the presence of Mr. Babcock, Mr. Dietzler, and myself; some other gentlemen were present. They purport to be returns of an election held on the constitution on the 21st of December, 1857, and also for officers under the constitution on the 4th of January, 1858.

J. W. DENVER.

We were present at Lecompton when the returns above referred to were opened by John Calhoun, and have examined the papers produced before the court, and testify that the statements made in the foregoing affidavit by J. W. Denver are true.

C. W. BABCOCK,
G. W. DEITZLER.

I, Josiah Miller, judge of probate in and for Douglas county, do hereby certify that the within is a true copy of the evidence in the case of H. J. Adams and others, claiming the right of possession to election returns, February 12, A. D. 1858.

[L. s.]

JOSIAH MILLER,
Judge of Probate.

Order of Court.

It appearing to the satisfaction of the court that the contents of the box brought into court by the sheriff have been proved to be the property and election returns, as set forth in the complaint and warrant, it is therefore ordered by the court that said box and contents, as delivered in open court by the sheriff, be given into the possession of the board of commissioners appointed by the present legislative assembly for the purpose of investigating election frauds, they demanding the right of possession; and that they retain possession of said returns for a space of time not to exceed ten days, during which time they can make such an examination of them as will enable them to proceed with their investigation. Then they shall deliver said returns and other papers connected therewith to the governor of this territory, to be by him delivered to such persons as are entitled to the legal custody of the same. By order of—

JOSIAH MILLER, *Judge.*

I, Josiah Miller, judge of probate in and for Douglas county, Kansas Territory, do certify that the foregoing writing is a true copy of the order of court in the matter of embezzling election returns in which H. J. Adams and others are complainants, February 12, A. D. 1858.

[L. s.]

JOSIAH MILLER,
Judge of Probate.

No. 63.

SAMUEL WALKER, being sworn, deposes as follows, (February 12:)
I am the sheriff of Douglas county, Kansas Territory. A search warrant was placed in my hands, issued by the probate judge of Douglas county, commanding me to search for election returns in the office of the surveyor general and adjacent buildings; also the grounds about said office and buildings in Lecompton. I went to General Maclane on the 2d day of February, 1858, and told him that I had a search warrant for the election returns. He said that I was welcome to search, that he had sent them off to General Calhoun, and that they were not about there. I told him "I thought he was mistaken—that I knew where they were." He asked me where, and I told him "in the wood pile." Said he, "I forbid you to search there." I told him that I should go and do the searching, and if it was not right he might prosecute me afterwards. He said that he would have to see the writ and have a lawyer examine it, and see whether or not it was legal. I handed it to him and told him that while he was examining it I would go and examine the wood pile. I went out to the wood pile and saw where there was some fresh dirt mixed with the chips about the wood pile, and told my assistants to pull down the wood at that place. We dug the dirt away after pulling down the wood, and found a box under about eight inches of dirt. I delivered it to the judge of probate in open court, without having opened it. This box in the possession of the board I recognize as the same box which I delivered to the court.

SAMUEL WALKER,
Sheriff of Douglas County, K. T.

No. 54.

N. B. BROOKS, being sworn, deposes and says, (February 5:)

I reside in Lecompton, Douglas county, Kansas Territory; am a clerk in the surveyor general's office; have acted in that capacity since last June. General Maclane has heretofore received the mail for the office, and I understand opens the letters which have reference to the business of the office. I was at Lecompton when the returns was said to have been opened by Calhoun for the elections of the 4th of January, 1858, and 21st December, 1857; was there at the time sheriff Walker came up there in company with several others and got a box, which I understood afterwards contained election returns. I was not present when Walker served the writ upon Maclane; saw Maclane reading a paper, and Walker was standing by his side; supposed it was a search warrant; saw some men with Walker removing the wood pile just in rear of the office.

I was standing in the room looking through the window; the window was about ten feet from the wood pile; I was standing a few feet from the window. I did not know at the time I saw Maclane reading the warrant what the nature of it was; I learned afterwards,

and thought Maclane was somewhat excited over it. I do not know that I ever saw the election returns after they were counted by Calhoun. When I saw these men throwing off the wood from the pile, I thought it was all foolishness; did not believe that they would find anything; I did not stand by the window but a short time before I turned away; looked out soon afterwards and saw the men with a box in their hands; the top of the box was split, and appeared partly open; I thought that I saw some yellow wrapping paper in the box. I have been shown by this board a box, with the top of it split, marked L. A. Maclane, Lecompton, Kansas Territory, per express, which appears to have been used for a candle box; I have seen boxes similar to this about the office of the surveyor general; think there are several there now similar to this. I did not know at the time Walker came up that the returns were in or about the office; I knew that Calhoun was gone, and thought probably he had them with him; I knew that there were some returns there at the time a man came up with a subpoena from this board, and at the request of Maclane wrote out a receipt for them, which the officer signed. Those returns purported to be mostly from Anderson and Breckenridge counties; did not know of any other returns at that time; I never asked Maclane any questions relative to the returns; he never told me that the box which was taken from under the wood pile contained election returns, that I remember of; I believed that it did, as it was so rumored about town. I have been shown by this board, in the box which I have described above, a large number of papers, which purport to be election returns; among them I see what purports to be the returns from Delaware Agency precinct; I find at the foot of the list the figures 379; I never saw a figure or letter upon any one of these returns before to my knowledge. Maclane took dinner with me on the day that sheriff Walker found the box at Lecompton; he remained in town some two hours after the box was taken. I do not recollect anything he said in relation to the box or its contents after it was taken away; do not know that I heard him say anything about it. The last I saw of Maclane was about three or half past three o'clock p. m.; he was then at Rising Sun, on the opposite side of the river from Lecompton; I crossed the river with him; do not know where he was going; have not heard from him since. He was chief clerk in the surveyor general's office; do not know whether or not he had any business which would take him away. I never saw any person putting papers into a box, such as has been shown me here by this board; have no idea who put the box under the wood pile; never heard any one say; I did not see the box taken from under the wood pile; saw men throwing the wood off the pile; saw a box in their hands; and saw a hole in the ground under where the wood was piled. The wood was piled there some two weeks ago by a man who corded it up to have it measured; never saw any man handle the wood until the day the box was found, except the man that drew it there, and the man that chops wood for the office. Maclane sleeps in the office generally. General Calhoun left Lecompton soon after the counting of the votes in company with the United States troops; I saw him a few days after in

Western Missouri. I left Lecompton on Wednesday the 20th January; met with Calhoun on the 21st at Weston.

Calhoun gave me some letters, one to be delivered to Governor Denver and one was directed to the postmaster at Lecompton; I had directions from Calhoun to deliver the letter directed to the postmaster to Maclane; Calhoun directed the letter to the postmaster at my suggestion; Calhoun gave me the letter while at Weston at the office of the International Hotel; the letter, when I saw it, was directed to L. A. Maclane; I suggested to Calhoun to direct it to some one else; he put it into another envelope and directed it to the postmaster at Lecompton; I carried it to Westport and enveloped it again, and marked it to Quinn, with the intention of sending it by express, but as there was no express messenger going up to Lecompton I kept it and delivered it myself to Maclane; I told Maclane that my reason for suggesting to Calhoun to have the letter directed to someone besides himself was, that I would be less likely to be detained on the route if directed to some one else.

I had no further conversation with him in relation to the letter; he did not tell me the contents; I saw him open the letter and take out some paper; did not see what was written upon the paper; I think very likely I have heard him speak of the Delaware Agency returns, but never heard him say that he had received them from Calhoun that I recollect of; I have heard the subject of the Delaware Agency returns talked of by a good many persons since the election; have heard of frauds being committed at the elections at Delaware Agency, Lawrence, Leavenworth, and Kickapoo, and various other places; I never asked Calhoun or Maclane anything about frauds at the elections or election returns; I avoided asking them anything about these things, as it was none of my business; I went to Weston at the time spoken of above on business connected with the office; went there to get some money; I have seen a paper with the names of the democratic candidates for member of Congress, State officers, and members of the senate and house of representatives, purporting to be the democratic candidates of Leavenworth county, which paper is ruled with spaces for the respective candidates for which the votes were cast, and opposite each candidates name the figures 379. The last time I recollect of hearing Calhoun speak of the result of the election in the Territory he was at Lecompton, and said that he was afraid we were beaten.

Mr. Maclane told me when he left Lecompton that I could direct any letters to him at Lexington, Missouri.

Maclane gave me a paper with the name of his brother-in-law, to whose care all communications should be addressed.

N. B. BROOKS.

No. 56.

WYLLIS C. RANSOM, being duly sworn, deposes and says:

I reside at Lecompton, Kansas Territory; am clerk in the surveyor general's office. I was clerk at the election on the 21st December for

the vote upon the constitution at Lecompton. I made up both the poll-books for that precinct; certified to the number of votes cast, and after the election returned it to General Calhoun, according to the requirements of the constitution. On the 22d day of December I started for Fort Scott, Bourbon county, to see my parents, who reside there. Upon my return from there on the following Tuesday, 29th December, I was asked by John Little, of Fort Scott, to bring along the returns of that precinct to Lecompton. They were put up in a package and directed to General Calhoun. I took them to Lecompton, but General Calhoun being absent I gave them to General Maclane.

I was called upon by General Calhoun at the time the votes were counted by General Calhoun for the election of the 21st of December for the constitution, and for the election of the 4th of January for officers under the constitution, to act as clerk for him while counting the returns. I saw all the returns counted that were counted at that time. The returns from Delaware Agency were not in at that time. There were some few returns came in after that, which I saw. Some few days after this General Calhoun sent to General Maclane to have him make out duplicates of all the returns that were then in and counted, and have them forwarded to him at Washington. I was called upon by Maclane to make out those duplicates. I did so, and in doing it had occasion to refer to the returns. After I was through with the returns I rolled them up in brown paper, and tied them in packages, and put them in a box in the office. I recognise these packages here before the board as the same which I then had, and they are tied with the same tape, according to the best of my belief, which I then tied them with. I have never seen them since the time I put them in the desk in the office until I saw them here before this board. My recollection of the abstract, as then made out by me, gave the democratic candidates, with the exception of Carr, the candidate for Congress, majorities ranging from seven to three hundred. I think the vote of Oxford precinct, in Johnston county, was about 800 for the election of the 4th of January. I recognise these papers before the board as the same as counted by Calhoun, and am willing to base my testimony on them, as I cannot recollect the precise vote of the different precincts. At the time Calhoun counted the votes there were no returns from Lawrence precinct, and in making out my abstract, which was sent to Calhoun, the Lawrence precinct was not counted.

We had no returns from Marshall or Pottawatomie counties, and from precincts in several other counties the returns were not received at the time the votes were counted, and were not mentioned in my abstract sent to Calhoun.

Governor Denver told me that in opening the election returns for the vote for or against the constitution, he had found returns for the election held for State officers among them, the returns from Lawrence precinct, and also several precincts in Pottawatomie county. At the time the votes were counted General Calhoun requested Governor Denver to open the returns in his possession, to see if there were not some returns directed to him which should be sent to Calhoun.

Denver declined, as he said he did not feel authorized to open them except in presence of the speaker of the house and chairman of the council of the territorial legislature.

The abstract, as made out by me and sent to Calhoun, is not a full statement of the vote of the Territory.

One week ago last Wednesday, January 27, Mr. Brooks brought a package into the office at Lecompton, which he delivered to General Maclane. That package was directed on the outside, I think, to Mr. Quinn, but Mr. Brooks stated that it was intended for Gen. Maclane; that he had put it in that envelope, marked Quinn, to avoid annoyance and detention. Maclane asked Brooks what it was. Brooks said he did not know anything about it; that it was given him by Calhoun. Maclane took the package and tore off two wrappers, and the third one was directed to Maclane. I asked him if I should look at the package, and he said I could. I took it and tore off the envelope, and found it to be the returns from Delaware Agency precinct for the election held at that precinct on the 4th of January, 1858. I recognise these papers, now in possession of this board, with the accompanying affidavits as signed by the judges of election, as the same papers which came in the package at that time. I examined them at that time to see if I could tell whose handwriting it was made out in. I do not recognize the handwriting as that of any one person that I know.

W. C. RANSOM.

No. 50.

SAMUEL J. JONES, being duly sworn, deposes and says, (February 3:)

I reside in Lecompton, Douglas county, K. T.; was there at the election of the 21st of December, 1857; saw nothing fraudulent in the conducting of that election. I electioneered for my party pretty hard; saw no person deterred from voting; was there at the election of the 4th of January, 1858; saw nothing fraudulent in the conducting of that election; everything passed off quietly about the polls. I do not know of any person, or persons, having been sent out of the Territory, or to other parts of the Territory, for the purpose of securing the success of any party. I was present at Lecompton when General Calhoun opened and counted the votes of the several precincts of the Territory, about the 13th of January, 1858. He came to Lecompton on the Sunday preceding the 13th, which was the 10th; he boarded at the same house with me, and has lived in my family for 12 or 18 months. I know him intimately; was at the surveyor general's office frequently about that time; saw papers which came in there purporting to be election returns. I was not present when Calhoun counted the votes. Calhoun told me on the night of the counting of the votes that, so far as the returns had been received, the democratic ticket was some two or three hundred ahead, but that the result depended entirely upon other precincts which might come in. Calhoun is a man of strong party feeling; is a "national democrat." Calhoun remained at Lecompton two or three days after the counting of the votes. On the day that the votes were counted I heard that Henderson had been arrested, charged with

making some alterations in election returns. My impression is that I told Calhoun of it. I understood that the charge was for altering the returns of Delaware Agency. Calhoun told me at the time that the votes were counted that the Delaware Agency returns had not been received by him. I saw him since that time in Weston, Missouri, about the 22d of January; he told me that the vote of that precinct had been received, and that there were some 379 votes returned, enough to carry Leavenworth county for the democratic party, and that the returns were duly certified to by the judges and clerks of election. Calhoun left for Washington City on Saturday, the 23d of January. Calhoun did not say that the returns were with him at that time. He said that they had been received. The last time that I saw any of the election returns was on the 13th of January, the night on which they were counted, except those which were sent down by Maclane on the 1st day of February, which were returns from Anderson, Breckenridge, Marshall, and Calhoun counties, for which he took a receipt from the deputy sergeant-at-arms of this board. I saw a subpoena which was served upon Maclane at this place on the 30th of January, commanding Maclane to bring all the returns he had in his possession before this board. My impression was, from what transpired, that the returns he sent down on the 1st of February were all that he had in his possession. I did not know at that time that there were any other election returns in Lecompton.

Maclane is chief clerk in the surveyor general's office; I am in the habit of visiting the office of the surveyor general daily, when I am in Lecompton; I had no knowledge of any box, containing election returns, having been buried about the surveyor general's office; I have no knowledge of the manner in which the election returns of Delaware Agency got from Calhoun at Weston to Lecompton; have no knowledge of any messenger going from Weston to Lecompton; I heard that there was a box of election returns found buried near the office at Lecompton on the 2d of February, by Sheriff Walker under a search warrant issued by Judge Miller. Maclane told me that Walker had got some returns on yesterday, the 2d day of February; it was about 12 o'clock m; he said that he had been subpoenaed to come before this board to testify in relation to the returns, and asked my advice in relation to it; I told him to come down and face the music; he said he was going to Missouri. I saw him start towards the river on foot; I think he got a mule from some one on the road; I saw a subpoena in the office for Maclane on the 22d of February, corresponding with the other which was served upon him at this place. He ordered a hack to come down, but afterwards changed his mind. He started for Missouri about half past 2 o'clock the same day. Mr. Sherrard, a clerk in the surveyor general's office, started with him. Maclane and Sherrard took dinner with me; I suppose that it is about fifty yards from my house to the wood pile under which the box of returns was said to be buried; I did not inquire how long the box had been buried; did not inquire anything about it; all I heard was that the box had been taken away. I inquired of Maclane, after he had been brought before this board, what the action of the board was. He told me that he had stated before the board that the returns had been sent to Cal-

houn in Missouri. That conversation was on Monday morning, February 1. I am acquainted with J. H. Danforth; I have seen his handwriting, and should think that I could recognize it; I have known him about two years. His residence is in Johnston county; has a claim near Oxford. He is a very active, energetic politician. I have seen a letter before this board purporting to have been written to Calhoun, and signed by J. H. Danforth; I think the handwriting is his. Mr. Danforth signs his letter as one of the commissioners of Johnson county.

I have seen an affidavit signed by Theodore Garrett, which affidavit appears to be in relation to the election held at Delaware Agency, in Leavenworth county; also, an affidavit signed by the judges and clerks of Delaware Agency precinct. These affidavits appear in the same handwriting as the letter above alluded to, and I think are in the handwriting of J. H. Danforth.

I have examined the Delaware Agency poll-book for the election held there on the 4th of January, 1858; do not know the handwriting in which it is made out; never saw the handwriting before. I have not seen Mr. Danforth since the election; do not know anything in regard to how any of the elections were conducted, except in Leecompton.

I do not know of any propositions having been made to any one outside of the Territory to vote.

I considered that any one who was in the Territory on the day of election was a legal voter under the constitution.

SAM'L J. JONES.

No. 57.

GEO. W. DEITZLER, being sworn, deposes and says, (February 6:)

I reside in Lawrence, Douglas county, K. T.; am speaker of the house of representatives of Kansas Territory. I was present at Leecompton on the 13th day of January, A. D. 1858, at the time General Calhoun opened and counted the returns for the vote upon the Leecompton constitution, which was held on the 21st day of December, A. D. 1857, and also for officers under the constitution, which election was held on the 4th day of January, A. D. 1858; was present by invitation from General Calhoun to see the said returns opened and counted.

I saw all the returns counted that were counted at that time. I kept a list of the returns as then counted; they were counted by General Calhoun, C. W. Babcock, and Governor J. W. Denver. Mac-lane and Mr. Ransom kept one abstract of the votes, and I kept one. We compared the lists as they were given in, and know them to be the same.

The vote upon the constitution was something over six thousand for the constitution with slavery, and five hundred and sixty-nine for the constitution without slavery. I do not remember the precise vote for the State officers, but the majority for the democratic ticket was something over three hundred. The returns from all the precincts

were not in; they were not in from Lawrence precinct, and some precincts in Doniphan, Anderson, and Calhoun counties, and some other which I do not recollect. These returns were sent in to Governor Denver. I saw them counted afterwards, and the majority for the free State ticket was upwards of six hundred, leaving a majority for the free State ticket of between three and four hundred votes by uniting the vote as counted by Calhoun, and those that were afterwards counted by Governor Denver. General Calhoun was asked at the time of the counting the votes, on the 13th of January, what the vote of Delaware Agency was. Calhoun replied, "they are not here." I have not seen General Calhoun since the count was made. Calhoun said at that time that he would not appoint any other day on which to count other returns which might come in, but would count them as they came in, and leave them in the office so that they might be examined by us at our leisure. He also said that he had made up his mind that he should not issue certificates of election to any of the candidates until Kansas was admitted as a State under the Lecompton constitution. I was in Lawrence on the morning of the 4th of January, at the election for officers under the Lecompton constitution; saw nothing fraudulent or tending to defeat the will of the people in the conducting of that election.

G. W. DEITZLER.

No. 56.

J. W. DENVER, being duly sworn, deposes and says, (February 6:)

I am acting governor of Kansas Territory.

Question by Mr. Green. "How many of the returns for the election held on the 4th of January, 1858, for officers under the Lecompton constitution, were directed to you and received and opened by you?"

Answer. "I don't recollect exactly; they were opened and read off by me and the number taken down by Mr. Dietzler; afterwards one or two small returns came in, the number of votes contained in which were also given to Mr. Dietzler, I believe. My recollection is that those returns directed to me give a majority of about six hundred and thirty for the free State ticket, which was, I think, exclusive of the one or two small returns referred to above. These returns, I think, gave somewhere between forty and fifty majority for the same ticket. These returns were all opened by myself, Mr. Babcock, and Mr. Dietzler, having been directed to me through mistake, as we supposed; these were opened the first or second day after the counting of the votes at Lecompton by General Calhoun.

All these returns, except the one or two small ones above referred to, were sent by me to General Calhoun.

Mr. Thomas Ewing, jr., carried them and sent me a receipt for the same from General Calhoun; the others were sent to General Maclane by his request in a letter of the 22d of January last.

Maclane stated in his letter that Calhoun had requested him to

make out an abstract of the returns to forward to him (Calhoun) at Washington.

I was present at the time the votes were counted by Calhoun at Leecompton. I have not a distinct recollection of the vote, as counted at that time, but my impression is that the Marshall ticket was something over three hundred ahead of the Smith ticket. I think it was 353. The vote of Lawrence precinct was not there at that time, and of some other precincts that were sent to me as spoken of above.

At that time some one made inquiry for the returns from Delaware Crossing. Calhoun said that all the returns received by him from Leavenworth county had been counted, but that "those from Delaware Crossing were not there."

He did not state whether he had or had not received them. This count took place on about the 13th or 14th of January last. I asked Calhoun on the day I came down to this place, I think the next day after counting, "how long he would continue to receive returns." He replied "until Congress shall act on the matter."

Question by Mr. Green. "State whether or not you have received a letter from General Calhoun, dated at Missouri, by the hands of Mr. Brooks."

Answer. "I wrote to General Calhoun by Mr. Ewing urging him to give a certified statement of the votes of Leavenworth county, and a statement in writing such as he had made to me verbally. That in regard to the Delaware Crossing returns he would abide by any statements the judges of the election at that precinct should make under oath.

In a letter dated at Weston, Missouri, January 19, he states that he declined giving such a certificate to Mr. Ewing, but that he had, two days before, sent a messenger to Delaware Crossing, and he must await his return before he would know how to act. Afterwards I received a letter from him by the hands of Mr. Brooks, dated Weston, Missouri, January 22d. This letter announces the return of the messenger with affidavits from the judges, copies of which he enclosed to me, as follows:

TERRITORY OF KANSAS, }
 County of Leavenworth. }

The undersigned judges and clerks of the election held for State officers and members of the State legislature, held at the precinct known as Delaware Agency, on the 4th day of January, A. D. 1858, do hereby certify that the returns made by us of said election were correct and genuine, and that any statement made by any person as to the vote of said precinct can only be determined as to its truth or falsity by a reference to said returns made by us as managers and clerks of said election at said precinct.

ISAAC MUNDAY,
 THEODORE F. GARRETT,
 JAMES C. GRINTER,
Judges.

W. C. WILSON,
 JAMES FINDLAY, *Clerks.*

I have been shown by this board papers purporting to be returns from Delaware Agency precinct, with affidavits accompanying them and signed as the exact copy above. The return itself I never saw before, but the affidavits dated the 18th of January last, and signed by Munday, Garrett, Grinter, Wilson, and Findlay. The certificate signed by them on the same sheet of paper, and the affidavit of Theodore F. Garrett, of the same date sworn to before Samuel M. Salters, correspond exactly with the copies sent to me by General Calhoun.

The returns from Delaware Agency precinct for the election of the 4th of January, for officers under the Lecompton constitution, shown to witness by this board, appears to be made out on seven half sheets of foolscap paper, which are attached to each other with wafers and written upon one side only. At the bottom of the seventh the certificate of the judges is attached on something less than a full half sheet, but of different width from the preceding seven half sheets.

The aggregate number of votes as shown by these returns is three hundred and seventy-nine."

J. W. DENVER.

Recalled.—Question. "State whether or not you have seen the election returns from the various precincts in the Territory since they were opened by General Calhoun at Lecompton."

Answer. "I presume I have."

Having been called before the judge of the probate court on last Tuesday, (the 2d day of February,) when a box was produced and opened by Sheriff Walker, and I was examined as witness to identify the papers in it. Many of them I did identify as the returns above alluded to, and have no doubt but that they were the same.

J. W. DENVER.

No. 67.

J. SABIN, being duly sworn, deposes and says, (February 13:)

I reside in Brownsville, Shawnee county, Kansas Territory. I was returning from St. Louis to Kansas about the middle of December; fell in company with a sheriff from the State of Wisconsin, who had a requisition on the governor of Missouri for a fugitive from justice. I stopped with him at Jefferson City, Missouri, some four days, during my stay there. I put up at the Virginia Hotel. I saw Governor Stewart, governor of Missouri, there. Frank Marshall, from Kansas, came in the next morning. I think Governor Stuart boarded at the hotel.

There were a number of the sheriffs from different counties in Missouri there at the time; among them were sheriffs from several of the counties bordering on Kansas. I learned while there that Frank Marshall had been nominated for governor of the State of Kansas under the Lecompton constitution by the democratic party. I am a democrat myself; was present several times when the matter was discussed as to the chances for the success of the democratic ticket in the Territory at the election to be held on the 4th of January;

heard several of the sheriffs from border counties state that they thought Marshall would be elected—"that their boys were all ready, and prepared to give him a good vote;" heard one sheriff from a border county (I think his name was Armstrong—he had but one hand, one arm was amputated below the elbow) say that he would give him three or four votes himself, and that the boys in his county would be prepared to give him five hundred. Another said his boys were prepared for about the same number. I think Governor Stewart was present at this conversation. I know that he was present at one conversation held at a drinking saloon opposite the Virginia Hotel, where the matter was talked of. He took part in the conversation, said he would like to be there himself, and thought the boys in Missouri were all right. Governor Stewart and Marshall held frequent conversations together on Kansas matters. I heard Marshall state "that the administration at Washington knew nothing about the wants of the people of Kansas; that they would send out one governor after another that the people of the Territory did not want.

"That Governor Denver would not remain there two months; that the governor of Kansas ought to be a man who was acquainted there." Marshall said that he was on his way to Washington, but had learned at Jefferson City that Governor Walker had resigned, and he should now return to Kansas and go to stumping it for the governorship himself.

Marshall said that "he had a number of traps set for Governor Denver, and it would be damned singular if he did not get his foot into some of them; that he would not remain the governor of Kansas long."

I supposed from the sheriffs of the several counties having business with the State treasurer that they were there to make their returns to the treasurer. There appeared to be a unison of feeling among the officers there in relation to aiding Marshall in his election in Kansas, with the exception of this sheriff from Wisconsin, who passed himself off as a Canadian, so that no one might know his mission and aid the fugitive he was after to escape.

JER'H SABIN.

No. 74.

E. C. POMEROY, being duly sworn, deposes and says.:

I am a resident of Atchison county, Kansas Territory; have resided in Kansas three years. On or about the 12th of December, 1857, I was at the place called Lone Jack, in Jackson county, Missouri, about thirty miles from Oxford, Kansas. I was with my family in a carriage on my way from St. Louis.

During the evening of the night I spent at Lone Jack, a party of citizens came into the hotel where I put up, and commenced making arrangements to go to Oxford, in Kansas, to vote on the 21st December. They read a list of names of persons pledged, as they said, to

go Oxford and vote for the constitution, and said "Kansas should have slavery in her constitution."

They must have had a hundred or more on their list. One or two of them said they had claims there; others said their "negroes would not be worth anything if Kansas was free."

One or two of the party knew me and recognized me after the conversation above mentioned as their prisoner during the "Wakarusa war" of 1855. I left Lone Jack in the morning. Do not know how many came over to vote, or whether any came.

SAMUEL C. POMEROY.

I, Scott J. Anthony, do hereby certify that I have examined the poll-books and election returns of Shawnee and Oxford precincts, in Johnson county, and Kickapoo and Delaware Agency precincts, in Leavenworth county, Kansas Territory, for the vote upon the Leecompton constitution on the 21st day of December, A. D. 1857, and the election for officers under said constitution on the 4th January, 1858, and find the number of names recorded on said poll-books as follows, to wit:

At Oxford, on the 21st December, 1,266.

At Oxford, on the 4th January, 738.

At Shawnee, on the 4th January, 936.

At Shawnee, on the 21st December, 753.

At Kickapoo, on the 21st December, 1,029.

At Kickapoo, on the 4th January, 995.

At Delaware Agency, on the 4th January, 379.

At Delaware Agency, on the 21st December, there were no polls opened.

I have examined and carefully compared the poll-books of Kickapoo precinct for the vote on the 21st December and 4th January, and find on those of the 4th January one hundred and one names that are recorded on those of the 21st December. I also find fifty-two names on the list of the 4th January that are so near like the names that occur on those of the 21st December that I am led to believe that they are intended for the same names.

After deducting these one hundred and fifty-three names I find eight hundred and seventy-six names on the list of 21st December which do not occur on those of 4th January, and eight hundred and forty-two on the 4th January, which are not on those of 21st December.

At Oxford precinct I find two hundred and twenty-seven names on the 4th January which occur on the list of 21st December, leaving five hundred and eleven names on the 4th January not on the list of 21st December, and one thousand and thirty-nine on the 21st December not on those of the 4th January.

SCOTT J. ANTHONY,

Clerk of the Board of Commissioners for the investigation of election frauds.

We do hereby certify that we have carefully compared the accompanying testimony of J. W. Morris, J. C. Vaughan, J. G. Losee, William Perry, W. W. Gallagher, William H. Elliott, Thomas Hamill, Alexander Ralston, J. H. Noteware, James M. Churchill, James C. Grinter, H. C. Fields, John D. Henderson, John Baker, Isaac Munday, George H. Stephens, John Gill Spivey, B. J. Franklin, L. A. Maclean, C. F. Currier, George W. Purkins, George C. Vanzandt, Wyllis C. Ransom, George W. Deitzler, Charles Mayo, J. M. Dickson, Adam Fisher, John H. Chandler, John A. Brown, Richard Hathaway, Joseph Cowell, A. J. Harrison, Green B. Redman, Andrew Sturgis, Sylvester Lowring, James E. Bruce, Lucien J. Eastin, Charles F. Laiblin, John L. Thompson, Marion Todd, H. C. Bradley, A. B. Miller, William Turner, William G. Roberts, Oliver Deifendorf, Samuel J. Jones, N. B. Brooks, J. W. Denver, James F. Walker, William H. Cole, L. W. Jones, Samuel Walker, Elias S. Dennis, A. A. Cox, B. F. Dare, David W. Brown, Thomas Ewing, jr., L. S. Bolling, J. Sabin, O. J. McFarland, Charles Godfrey, David Upham, and Samuel C. Pomeroy, with the original affidavits, as signed by them and sworn to before the board of commissioners created by acts of the governor and legislative assembly of the Territory of Kansas for the purpose of investigating the frauds committed at the election of the 21st of December, A. D. 1857, for the vote upon the Lecompton constitution, and the election of the 4th of January for officers under said constitution, and that they are true and correct copies of said affidavits now in the possession of said board of commissioners.

HENRY J. ADAMS,
President of the Board.
SCOTT J. ANTHONY,
Clerk of the Board.

TERRITORY OF KANSAS, }
County of Leavenworth. } ss.

I, George W. Purkins, judge of the probate court within and for the county and Territory aforesaid, do hereby certify that Henry J. Adams was elected president of the board of commissioners appointed by the legislative assembly of Kansas Territory under an act passed on the thirteenth day of January, A. D. 1858, and I further certify that Scott S. Anthony was elected clerk of said commissioners; that I have examined the signatures of the said Henry J. Adams and Scott J. Anthony signed to the foregoing testimony, and being well acquainted with their handwriting, and they being now in my presence, I know their signatures are genuine and correct.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court at office this 20th day of February,
[L. s.] A. D. 1858.

GEORGE W. PURKINS, *Judge, &c.*

IN THE HOUSE OF REPRESENTATIVES.

On the 11th of March, 1858, Mr. THOS. L. HARRIS rose and said: "I desire to state in behalf of myself and Messrs. Adrain, Morrill, Wade, Bennett, Walbridge, and Buffington, of the select committee appointed under the order of the House of Representatives of the 8th of February last, to whom was referred the President's message concerning the Lecompton constitution, with instructions that, in their opinion, said committee had failed and refused to execute the order of the House contained in the resolution of their appointment, and had adjourned *sine die*; and in proof thereof I propose, as a question of privilege, to read the journals and minutes of said committee, and a written statement relating thereto."

The Speaker decided that the statement presented involved no question of privilege.

The following is the document which Mr. Harris desired to present to the House:

The undersigned, members of the special committee, to whom was referred the message of the President of the United States concerning the constitution framed at Lecompton, in the Territory of Kansas, submit for the consideration of the House—

That said committee were instructed, by the resolution of the 8th instant, "to inquire into all the facts connected with the formation of said constitution and the laws under which the same was originated, and into all such facts and proceedings as have transpired since the formation of said constitution having relation to the question or propriety of the admission of said territory into the Union under said constitution, and whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas, and that they have power to send for persons and papers."

The undersigned, in order to present to the House the entire action of the committee, submit a complete record of its minutes and proceedings as follows, to wit:

The special committee appointed under the resolution and order of the House of Representatives, as set forth in the certificate of the clerk, as follows, to wit:

THIRTY-FIFTH CONGRESS, FIRST SESSION.

IN THE HOUSE OF REPRESENTATIVES, Feb. 8, 1858.

On motion of Mr. Thomas L. Harris,

Resolved, That the message of the President concerning the constitution framed at Lecompton, in the Territory of Kansas, by a convention of delegates thereof, and the papers accompanying the same, be referred to a select committee of fifteen, to be appointed by the Speaker.

That said committee be instructed to inquire into all the facts con-

ected with the formation of said constitution, and the laws under which the same was originated, and into all such facts and proceedings as have transpired since the formation of said constitution having relation to the question or propriety of the admission of said Territory into the Union under said constitution, and whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas; and that said committee have power to send for persons and papers.

Ordered, That—

Thos. L. Harris, Illinois,
A. H. Stephens, Georgia,
Morrill, Vermont,
Letcher, Virginia,
Wade, Ohio,
Quitman, Mississippi,
Winslow, North Carolina,

Bennett, New York,
White, Pennsylvania,
Walbridge, Michigan,
Anderson, Missouri,
Stephenson, Kentucky,
Buffington, Massachusetts,
Russell, New York,

be appointed said committee.

Attest:

J. C. ALLEN, *Clerk.*

Assembled on Monday evening, February 15, 1858, at room No. 27, in the south wing of the Capitol.

Present: all the members of said committee.

Mr. Adrain moved the adoption of the following resolutions:

Resolved, That there be procured with all possible despatch from the Department of State, or from the acting governor of Kansas Territory, copies of the returns and votes cast for or against a convention at an election held in the Territory of Kansas, in October, 1856.

Also copies of the census and registration of votes in the Territory of Kansas, under the provisions of the act of said legislature, passed in February, 1857, providing for the election of delegates and assembling a convention to frame a constitution.

Also copies of the returns of an election held in said Territory on the 27th of December, 1857, under the schedule of the Lecompton constitution upon the question of "constitution with slavery," or "constitution without slavery."

Also copies of the returns of an election held in the Territory of Kansas on the 4th day of January, 1858, under the authority of a law passed by the legislature of said Territory, submitting the constitution formed by the Lecompton convention to a vote of the people for ratification or rejection; also a copy of said law.

Resolved, That the chairman of this committee be requested to procure from the acting governor of Kansas, or from the State Department, at Washington, copies of returns of the election held in said Territory on the Lecompton constitution on the 4th day of January, 1858, under the schedule of the Lecompton constitution, for governor and other state officers, and for members of the legislature, specifying the name of each officer to whom a certificate of election has been awarded, and the number of votes cast and counted for each candidate, and distinguishing between the votes returned within the time and in the mode prescribed in said schedule and those returned subsequently and in other modes, and stating whether at either of said elections any returns of votes were rejected in consequence of not

having been returned in time, or to the right officer, or in proper form, or for any other cause; stating specifically for what cause.

Mr. Stephens moved to amend the resolutions of Mr. Adrain by striking out all after the word "Resolved," and inserting as follows:

That the chairman of this committee, after inquiry made at the State Department and the Interior Department for the same, report to this committee, at its next meeting, copies of the following papers, or such as he can obtain, and in case he cannot get copies of the whole of the same, that he report those that he cannot procure copies of, to wit:

Copies of the law under which the convention assembled at Leecompton, and under which the constitution there adopted was organized; also the returns of the election or vote on said constitution on the 21st of December last; also copies of the law, if any, by which the sense of the people of Kansas on the question of the propriety of their applying for admission as a State in the Union, and the vote thereon; also copies of the registration of voters for the election of delegates to said convention as well as the apportionment of delegates to the same.

The question was then taken by ayes and noes on the motion of Mr. Stephens.

Ayes—Messrs. Stephens, Letcher, Winslow, White, Anderson, Quitman, Stevenson, and Russell—8.

Noes—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, and Buffington—7.

So the amendment of Mr. Stephens was adopted, and the question recurring on the resolution as amended, it was decided in the affirmative.

Ayes—Messrs. Stephens, Letcher, Winslow, White, Anderson, Quitman, Stevenson, and Russell—8.

Noes—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrian, and Buffington—7.

Mr. Adrian moved the adoption of the following resolution:

Resolved, That the chairman of this committee procure copies of the returns of an election held in the Territory of Kansas on the 4th day of January, 1858, under the authority of a law passed by the legislature of said Territory, submitting the constitution formed by the Leecompton convention to a vote of the people for ratification or rejection, and a copy of the law under which such election was held.

Mr. Winslow moved to lay the resolution on the table; which motion was decided in the affirmative by yeas and nays.

Yeas—Messrs. Stephens, Letcher, Winslow, White, Anderson, Quitman, Stephenson, and Russell—8.

Nays—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, and Buffington—7.

So the resolution was laid upon the table.

Mr. Walbridge moved the adoption of the following resolution:

Resolved, That this committee inquire into the validity of the law providing for a constitutional convention in the Territory of Kansas, and under which members of the convention were elected.

Mr. Winslow moved to lay said resolution upon the table; and the question, being taken by yeas and nays, was decided in the affirmative.

Yeas—Messrs. Stephens, Letcher, Winslow, White, Anderson, Quitman, Stevenson, and Russell—8.

Nays—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, and Buffington—7.

So the resolution was laid upon the table.

On motion of Mr. Quitman, the committee adjourned to meet at the room of the Committee of Ways and Means on Wednesday, February 17, 1858, at 7 o'clock p. m.

THOS. L. HARRIS, *Chairman.*

FEBRUARY 17, 1858.

The committee met pursuant to adjournment. Present: All the members.

The chair informed the committee that he had, in conformity with the order of the committee at the last meeting, addressed letters to the Secretaries of the State and Interior Departments, enclosing copies of the resolutions adopted at the last meeting of the committee, and requesting the information sought for by said resolutions, and that he had received no reply from the State Department; but from the Secretary of the Interior, he had received a communication which he read, as follows:

DEPARTMENT OF THE INTERIOR,
Washington, February 17, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of the 16th inst., enclosing a copy of a resolution adopted on the 15th inst. by the Special Committee of the House Representatives, of which you are chairman. The resolution having directed you to call on this department for copies of certain laws of the legislature of Kansas, and of certain election returns, and a registration of voters.

In reply to your letter and to said resolution, I have the honor to state that the files of this department do not contain any of the documents referred to in that resolution, unless some of them may be found among the printed documents of the present session of Congress lately received here. To such, if any there be, it is presumed your inquiry was not designed to extend.

Very respectfully, your obedient servant,

J. THOMPSON,
Secretary.

HON. THOS. L. HARRIS,
*Chairman of the Special Committee,
United States House of Representatives.*

Mr. Morrill submitted the following resolution:

Resolved, That in order to comply with the order of the house under which this committee was organized, which required that we should inquire into all the facts connected with the formation of said Leecompton constitution, and the laws under which the same was originated, and also whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas, the chairman be authorized to have summoned to appear before the committee the following named

No election returns or registration of voters in Kansas have, it is believed, ever been received at this department.

I have the honor to be, sir, your obedient servant,

LEWIS CASS.

Hon. THOMAS L. HARRIS,

*Chairman of the Special Committee of the Ho. of Reps
On the Constitution of the Territory of Kansas.*

The chairman also laid before the committee a subsequent letter from the Secretary of State, with a copy of the act of December 17, of the territorial legislature, providing for a submission of the constitution to a vote of the people of Kansas for adoption or rejection.

Mr. Morrill submitted the following preamble and resolutions for adoption:

Whereas it appears by the annual message of the President that instructions were sent to Governor Walker, dated the 28th of March last, and no instructions of that date appear in the documents hitherto transmitted;

Whereas Governor Walker declared in his address "to the people of Kansas, dated September 10, 1857," as follows: "I should have greatly preferred, as expressed in my letter of acceptance of the office of governor of this Territory, never to have been required to call out the troops even as a precautionary measure," and no such letter appears in the documents hitherto transmitted;

Whereas Governor Walker, in his letter to Mr. Cass, dated July 15, 1857, says, "in view of my official letter of the 2d June, 1857, and of the conditions upon which I agreed, with great reluctance, to accept the position of governor of this Territory, namely, that Gen. Harney, in whom I have great confidence, and who was well known to the people of Kansas, and greatly respected by them, should be ordered from Florida, put in special command in Kansas, with a large body of troops, and especially dragoons and a battery, and retained there subject to any directions for military operations, if necessary, in Kansas, until the danger was over, and in the absence of which I never would have accepted the office," &c.; and no such letter containing these conditions appears in the documents hitherto transmitted;

Whereas, in the letter of Governor Walker, dated December 15, 1857, it is stated as follows: "I accepted, however, on the express condition that I should advocate the submission of the constitution to the vote of the people for ratification or rejection. These views were clearly understood by the President and all his cabinet. They were distinctly set forth in my letter of acceptance of this office of the 26th of March last," and no such letter appears in the document hitherto transmitted: Therefore—

Resolved, That the chairman of this committee be requested to procure of the President of the United States copies of all letters and instructions in any manner referred to in the foregoing preamble, together with any replies thereto, or endorsements thereon, at the earliest practical moment.

Mr. Stephens moved to lay the preamble and resolution upon the

table ; and the question, being taken by ayes and noes, was decided in the negative, as follows :

Ayes—Messrs. Stephens, Winslow, White, Anderson, Quitman, Stevenson, and Russell—7.

Noes—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, and Buffinton—7.

The question recurring upon the adoption of the resolution, it was decided in the negative by ayes and noes, as follows :

Ayes—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, and Buffinton—7. *Noes*—Messrs. Stephens, Winslow, White, Anderson, Quitman, Stephenson, and Russell—7.

Mr. Walbridge offered for adoption the following resolution :

Whereas the territorial legislature of Kansas appointed a commissioner to investigate certain frauds said to have been perpetrated in the elections held in said territory on the 21st of December and the 4th of January last, and in the returns of said election, and whereas said commissioners are understood to have made such investigation, and to have examined many returns in relation thereto, therefore—

Resolved, That the chairman of this committee be and he is hereby instructed to procure an authenticated and duly certified copy of all the testimony taken before said commissioner in relation to such frauds.

And the question, being taken by ayes and noes, was decided in the negative by ayes and noes, as follows :

Ayes—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, and Buffinton—7. *Noes*—Messrs. Stephens, Winslow, White, Anderson, Quitman, Stephenson, and Russell—7.

Mr. Morrill offered the following resolution for adoption ; which was unanimously agreed to :

Resolved, That the chairman be requested to inquire for and procure "the statement" of John Calhoun, the late president of the Lecompton constitutional convention, relative to the number of voters in certain counties in the Territory of Kansas, where no census was taken or registry of voters made prior to the election of delegates to the said convention, and to which Senator Green refers in his report of February 18, 1858.

Mr. Morrill offered for adoption the following resolution :

Resolved, That it appears in Executive Document No. 8, transmitted to the Senate December 22, 1857, the President of the United States directed a communication, dated August 15, 1857, to Rev. Nathaniel W. Taylor, D. D., Rev. Theodore D. Woolsey, D. D. LL.D., and others, to which a reply is understood to have been made, and the chairman is directed to procure a copy of the same at the earliest moment, if an authenticated copy can be obtained.

And the question being taken, it was decided in the negative.

Mr. Wade offered for adoption the following resolution :

Whereas the House of Representatives, by ordering the appointment of this committee, has assumed that Congress is clothed with the power, prior to giving its assent to the admission into the Union of a new State organized out of the territory of the United States without an enabling act of Congress authorizing such State organiza

tion, to inquire into and ascertain all facts affecting the justice, good faith, and equality of such application, and especially to ascertain whether such constitution was framed and such application made with the consent of a majority of the *bona fide* residents, being legal voters of such Territory at the time of the organization and application for admission into the Union of such State government. And the said House did further determine that Congress is not estopped by any legal forms whatsoever, under which such frauds may be attempted to be concealed, from examining into the same, and for good cause treating the same as absolutely null and void ; therefore—

Resolved, That it is the duty of this committee to proceed forthwith to obtain all such evidence, either oral or documentary, which may be obtained, tending to prove—

1. Frauds in dividing the said Territory of Kansas into election districts, preparatory to the election of delegates to the Lecompton constitutional convention, and each of the territorial elections subsequently held in said Territory, down to and including the election of January 4, 1858, whether held for territorial purposes or State and federal officers under said Lecompton constitution.

2. Frauds in the registration of illegal, or the omission to register the legal voters of said Territory, or of any election districts or precinct of the same, preparatory to each and all of the elections above specified.

3. Frauds at such elections, or any or either of them, by receiving illegal or by the exclusion of legal votes.

4. Frauds in the returns of said elections or any or either of them, by returning the names of fictitious voters, and the erasure or non-registering the names of legal voters, or by the destruction or withholding of the poll-books of said elections, or any or either of them, in any of the election districts or precincts in said Territory.

5. Frauds in taking the census in said Territory, or any part thereof, whereby illegal or fictitious voters were enumerated in and the *bona fide* residents of said Territory excluded from such enumeration.

6. Frauds or forgeries in the returning certificates of the returns of such elections, or any or either of them, or at any election district or voting precinct in said Territory at such elections, or any or either of them.

7. Such frauds or alleged violence in said Territory or any voting precinct thereof, whereby the legal voters or any portions of them in such precinct or precincts were reasonably deterred from attempting to exercise their right of voting at such elections, or any or either of them.

Resolved, That the chairman of this committee be and he is hereby directed to take immediate measures to procure the production before this committee of any document or documents in the archives of the executive government at Washington, and also in the possession of the acting governor, secretary, or other officer of the executive government of the Territory of Kansas, or of any subordinate officer or officers having in his or their possession such document or documents containing evidence pertinent to the proof or disproof of the facts

aforesaid ; and also to procure the attendance of such witnesses as may be able to give oral testimony pertinent to the same.

And the question being taken, it was decided in the negative by ayes and noes, as follows: *Ayes*—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrian, and Buffington—7. *Noes*—Messrs. Stevens, Winslow, White, Anderson, Quitman, Stevenson, and Russell—7.

Mr. Stephens moved that the committee adjourn to next Wednesday (March 3) evening at 7 o'clock ; which motion was decided in the negative by ayes and noes, as follows: *Ayes*—Messrs. Stephens, Winslow, White, Anderson, Quitman, Stevenson, and Russell—7. *Noes*—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrian, and Buffington—7.

Mr. Quitman moved that the committee adjourn to next Monday (March 1st) evening at 7 o'clock ; which motion was decided in the negative by ayes and noes, as follows: *Ayes*—Messrs. Stephens, Winslow, White, Anderson, Quitman, Stevenson, and Russell—7. *Noes*—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrian, and Buffington—7.

Mr. Adrian then offered for adoption the following resolutions :

Resolved, That the election held in the Territory of Kansas on the 4th of January last, submitting the Lecompton constitution to the vote of approval or rejection by the people of said Territory, in pursuance of the act of the territorial legislature, approved by Gov. Denver on the 17th December, 1857, at which it appears, by the proclamation of said governor, that there was a majority of more than 10,000 legal voters in said Territory against said constitution, is an important fact, as indicating whether or not said constitution "is acceptable and satisfactory to a majority of the legal voters of Kansas," into which fact this committee, by the resolution creating it, was directed to inquire, and this committee will therefore inquire into the same.

Resolved, That, as the House of Representatives have instructed this committee to inquire into the propriety of the admission of Kansas into the Union under the Lecompton constitution, it is, in the opinion of this committee, not in accordance with propriety to recognize said constitution, in admitting said State, against the expressed will of a large majority of the inhabitants thereof; and, as such fact has been charged by the joint resolution of the territorial legislature of Kansas, this committee will inquire into the same, in accordance with the instructions of the House of Representatives.

And the question being taken upon the adoption of said resolutions, it was decided in the negative by ayes and noes, as follows, to wit:

Ayes—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrian, and Buffington—7.

Noes—Messrs. Stephens, Winslow, White, Anderson, Quitman, Stevenson, and Russell—7.

Mr. Stephens gave notice that at the next meeting of the committee he should move the adoption of certain resolutions (which he read) expressing the opinion of the committee as to the information the committee were instructed to obtain, and the inquiries they were to make, and terminating the labors of the committee. And then, on

motion of Mr. Stephens, the committee adjourned to Wednesday evening (March 3) at 7 o'clock

WEDNESDAY EVENING, *March 3, 1858.*

Committee met pursuant to adjournment. Present: All the members.

The chair laid before the committee a letter from John Calhoun, received through the hands of Mr. Stevens.

Mr. Stephens submitted his views in the form of a report, which he read to the committee, also the following resolutions:

Resolved, That the law of the Territory of Kansas, providing for taking the sense of the people of that Territory, upon the propriety of their applying for admission as a State into the Union, and the vote of the people under said law; also the law of said Territory providing for the call of a convention in pursuance of the popular will thus expressed, together with the registration of voters and the apportionment of delegates to said convention under said act, and the election of said delegates as officially certified to, the constitution as framed by said convention, and the vote on its submission under its own schedule and provision, as officially adjudged and announced, embraces all the laws and facts essential to the investigation of the questions submitted to this committee under the resolution of their appointment.

Resolved, That while we do not consider the vote of the 4th of January last on the submission of said constitution by the late territorial legislature as having any material bearing upon the events of this inquiry, yet we admit, receive, and allow to be filed with the other matters collected by this committee the vote at that election as proclaimed and published by the officers of the legislature.

And the question being taken on the adoption of the resolutions, it was decided in the affirmative, the yeas and nays being as follows:

YEAS—Messrs. Stephens, Letcher, Quitman, Winslow, White, Anderson, Stevenson, and Russell—8.

NAYS—Messrs. Harris, Morrill, Bennett, Walbridge, Adrain, and Buffinton—7.

Mr. Bennett moved the adoption of the following resolution:

Resolved, That the statement of John Calhoun, on file by the call of this committee, is not considered evidence of the facts therein stated.

Mr. Letcher moved to lay the resolution upon the table; which motion was decided in the negative, the yeas and nays being as follows:

YEAS—Messrs. Stephens, Letcher, Quitman, Winslow, White, Anderson, and Stephenson—7.

NAYS—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, Buffinton, and Russell—8.

The question recurring on the adoption of the resolution, it was decided in the affirmative, and the yeas and nays being as follows:

YEAS—Messrs. Harris, Stephens, Morrill, Wade, Bennett, Walbridge, Adrain, Buffinton, and Russell—9.

NAYS—Messrs. Letcher, Quitman, Winslow, White, Anderson, and Stevenson—6.

Mr. Quitman moved that the report read by Mr. Stephens be adopted

by the committee ; which motion was decided in the affirmative, the yeas and nays being as follows :

YEAS—Messrs. Stephens, Letcher, Quitman, Winslow, White, Anderson, and Russell—8.

NAYS—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, and Buffinton—7.

Mr. Adrain moved that the committee adjourn until to-morrow evening ; which motion was decided in the negative, the yeas and nays being as follows :

YEAS—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, and Buffinton—7.

NAYS—Messrs. Stephens, Letcher, Quitman, Winslow, White, Anderson, Stevenson, and Russell—8.

Mr. Stephens moved that the committee adjourn *sine die* ; which motion was decided in the affirmative, the yeas and nays being as follows :

YEAS.—Messrs. Stephens, Letcher, Quitman, Winslow, White, Anderson, Stevenson, and Russell—8.

NAYS.—Messrs. Harris, Morrill, Wade, Bennett, Walbridge, Adrain, and Buffinton—7.

THOS. L. HARRIS, *Chairman*.

In thus submitting the journal of the committee to the inspection of the House, the undersigned feel it their duty to express their views upon the action of the majority of the committee, constituted as it originally was with a majority of its members hostile to the resolution by which it was created and under which it was directed to act.

The undersigned indulge in no reflections discreditable to the character and integrity of the majority of the committee, from whom they have been compelled to differ, most of whom were undoubtedly selected from the ablest and most experienced members of the House. Yet, in their action, in the opinion of the undersigned, they have stripped the resolution under which they were appointed of all practical effect and substituted their own views and speculations alone, in a great measure, for that evidence which ought to have been collected by the committee. With the exception of a call upon Mr. Calhoun, proposed by one of the undersigned, and an inquiry as to the apportionment of delegates, the majority have resisted successfully every effort at inquiry made by either of us, while they themselves have elicited nothing relative to the matter of inquiry not already before the country. Indeed, some of the most important items of information, admitted by the majority in the resolutions adopted by them in committee at its last session to be "essential to the investigation," have never been obtained by the committee, to wit: "the vote of the people under the law" for taking their "sense" for and against a constitution.

"The election of judges, as officially certified to, and the vote on the submission of the constitution under its new schedule and provisions, as officially adjudged and announced." These important facts, admitted to be essential to the majority, have not, as far as the undersigned have knowledge, ever been brought before the committee.

In addition to these important facts we thought it entirely pertinent

and essential to objects of an investigation to ascertain by the best evidence within our reach:

1. The population of the Territory.
2. The disposition of the people thereof towards the government of the United States.
3. Whether, as charged by the President, the people of Kansas are in rebellion against the government under which they live.
4. Whether the alleged vote on the "sense of the people for and against a constitution," was taken under such laws, and in such manner as to entitle it to be considered as expressing the "sense of the people."
5. Whether the paper purporting to be the "constitution of the State of Kansas" was made by the people over whom it was designed to operate, and embodies their will fairly and legally expressed.
6. Whether the elections which have been held in connexion with the formation of said constitution, both before and since its adoption by the convention, were so taken, conducted, and returned as to give effect to the popular will, and what that will was and is.
7. How far the result of the election on the 4th of January upon said constitution and for state officers are indicative of the will of the people of Kansas, either as to the propriety of the admission of said proposed State into the Union or as showing whether said constitution is acceptable and satisfactory to a majority of the legal voters of Kansas; and hence an inquiry whether the returns of said elections as published are true or false, and as a further reason for such inquiry, that as said constitution provides no mode of correcting frauds or contesting elections, how far Congress might, by the admission of said State commit itself to the endorsement and confirmation of frauds, and to fostering upon the people of Kansas a government and institutions against their will.
8. Whether certain protests and resolves said to have been passed by the territorial legislature against the admission of Kansas under the Lecompton constitution ought not to be obtained and considered as indicating the will of the people in that regard? These and numerous other points of inquiry which the undersigned thought material and essential to the investigation ordered by the House "as facts connected with the formation of said constitution," and facts connected with "the laws under which the same was originated," and as facts relating to "the question or propriety of the admission of said territory into the Union under said constitution, and whether the same is acceptable and satisfactory to a majority of the legal voters of Kansas," were untouched and unnoticed by the committee; and on the 3d instant the committee, by an adjournment *sine die*, brought its labors to a close, having in our opinion failed to execute the order of the House, and having failed, also, to accomplish any one purpose for which the committee was raised, we therefore submit that the committee have (and as we think the journal of their proceedings will make good proof) not conducted the investigation in accordance with the letter or spirit of the instructions of the House, but in derogation of both.

But it is pretended that the majority of the committee were not

bound to go into the investigations desired by the minority, because Mr. Harris modified his original resolution, and, instead of requiring investigation upon particular points, made the requirement general. The original resolution offered by Mr. Harris was as follows:

"That the message of the President concerning the constitution framed at Lecompton, in the Territory of Kansas, by a convention of delegates thereof, and the papers accompanying the same, be referred to a select committee of thirteen, to be appointed by the speaker.

"That said committee be instructed to inquire into all the facts connected with the formation of said constitution, and the laws, if any, under which the same was originated, and whether such laws have been complied with and followed.

"Whether said constitution provides for a republican form of government, and whether there are included within the proposed boundaries of Kansas sufficient population to be entitled to a representative in this House upon the basis now fixed by law, and whether said constitution is acceptable and satisfactory to a majority of legal voters of Kansas.

"Also the number of votes cast, if any, and when, in favor of a convention to form a constitution as aforesaid; and the places where they were cast, and the number cast at each place of voting and in each county in the Territory.

"The apportionment of delegates to said convention among the different counties and election districts of said Territory, and the census or registration under which the same was made, and whether the same was just and fair or in compliance with law.

"The names of the delegates to said convention, and the number of votes cast for each candidate for delegate, and the places where cast, and whether said constitution received the votes of a majority of the delegates to said convention.

"The number of votes cast in said Territory on the 21st of December last for and against said constitution, and for and against any parts or features thereof, and the number so cast at each place of voting in said Territory.

"The number of votes cast in said Territory on the 4th day of January last for and against said constitution, and for or against any parts or features thereof, and the number so cast at each place of voting in said Territory.

"The number votes cast in said Territory on the day last named for any State and legislative officers thereof, and the number so cast for each candidate for such offices, and the places where cast.

"That said committee also ascertain, as nearly as possible, what portion, if any, of the votes so cast at any of the times and places aforesaid were fraudulent or illegal.

"Whether any portion, and if so what portion of the people of Kansas are in open rebellion against the laws of the country.

"And that said committee have power to send for persons and papers."

Before the question was taken, Mr. Harris modified the resolution so as to have it read as we have given it at the commencement of this

report. And one of the reasons for its modification was to give it a wider scope than it had with the specifications. It is a well known rule of law, applicable to legislative instructions, that "*expressio unius, est exclusio alterius.*" By naming some points of inquiry, the understanding would be that all intended were named, and the committee would examine no others. But in the form in which the resolution was finally adopted, it required examination "into *all the facts* connected with the formation of said constitution and *the laws* under which the same was originated, and into *all such facts* and *proceedings* as have transpired since the formation of said constitution *having relation to the question or propriety* of the admission of said Territory into the Union under said constitution, and whether the same is acceptable and satisfactory to a majority of the people of Kansas."

Could a resolution be framed broader or more comprehensive than this? If it could, we know not what language would express it. It includes every point specified in the original resolutions and whatever else the committee might think properly within its scope; and in the opinion of the undersigned it is but quibbling to say that this resolution did not comprehend the full import of the original resolutions, and did not require the fullest investigation, as was desired by the minority and so appears from the record.

There has been ample time since the committee was raised to have procured all the information sought by the House, had the committee taken the proper steps to obtain it. There has been time to have procured, even from Kansas, that important information which even the majority consider essential, but of which the committee and the House knew nothing. There are scores of prominent citizens from Kansas, of all parties, now here at the Capitol, who could have given most weighty evidence touching all the points of inquiry embraced in the resolution of the House, and particularly in relation to the most monstrous frauds perpetrated in the election of the 21st of December last.

The undersigned have conversed with some of these gentlemen, and they feel assured that most valuable information, and directly pertinent to the investigation ordered, could be readily obtained without delay, and at a most trifling expense. Under all these circumstances we think there is no excuse for neglecting to use the means within the reach of the committee, and for returning to the House with no information but what was already in the possession of each of its members when the investigation was ordered, except the speculative reasonings and casuistic lucubrations laid down by the majority in their report, which, leaving out sundry quotations from the opinions of Governor Walker and Senator Douglas, and some considerations growing out of these opinions, is but a reiteration of the views laid down in the President's message. Indeed, although the House ordered an inquiry into "*all the facts connected with the formation of the Le-compton constitution,*" yet the committee are understood to have taken the ground throughout their proceedings and in their report that "*Congress cannot inquire into the mode and manner of its adoption any more than into its substance,*" and they cannot inquire into the substance at all, except to see that it is republican. From this it would

seem that the majority of the committee assume to decide upon the proper line of inquiry, instead of obeying the order of the House. If Congress cannot inquire into the mode and manner of its adoption, then they cannot inquire if it was ever adopted at all.

The undersigned claim it to be their privilege to repeat the proceedings of the committee to the House, to the end that if the committee shall, by the House, be held to have failed to comply with its order, the responsibility may rest where it belongs. They also held that under their views of the action of the committee, it is their duty to report that action to the House, to the end that it may make such further order thereon as may be deemed just and proper.

JAMES BUFFINGTON,
EDWARD WADE,
THOMAS L. HARRIS,
G. B. ADRIAN,
J. S. MORRILL,
D. S. WALBRIDGE,
HENRY BENNETT.



BOOKS ORDERED TO BE PRINTED BY PREVIOUS CONGRESSES.

MAY 12, 1858.—Ordered to be printed, and recommitted to the Committee on Printing.

Mr. NICHOLS, from the Committee on Printing, submitted the following

REPORT.

The Joint Committee on Printing, who were instructed by a resolution of the House of Representatives, of the 5th of April last, "to inquire into the propriety of suspending the printing of any books which may have been ordered by any previous Congress; and if the printing of any of said books has been commenced, that they inquire how far the work has progressed, and whether it is proper to discontinue their publication, and pay for the work which may have been done; and that they report by bill or otherwise," respectfully ask leave to submit the following report:

That they have carefully examined into the matters referred to them and have found that all the reports ordered to be printed by Congress, previous to the present session, have either been completed or are in such a state of forwardness that the suspension of either of them would result in the loss of much valuable information to the country, which has been collected at very great expense.

Their investigations, however, have led them to the conclusion that, while they recommend the completion of the printing of all the reports heretofore ordered, the number of copies may be so reduced upon some of the volumes not yet printed as to effect a very considerable saving of the public money, and, at the same time, furnish as many copies of each as will meet all the requirements of the government and of the public.

The unfinished works are three in number, as follows:

1. *The Report of the results of the United States Naval Astronomical Expedition to Chili*, ordered to be printed at the first session of the thirty-third Congress. This work will comprise six volumes, four of which are printed, and the printing of the remaining two are progressing simultaneously. The number of extra copies being small—1,000 for the Senate and 2,000 for the House—the saving of expense to be effected by rescinding the resolutions to print them would be so inconsiderable that the committee do not deem it expedient to recommend any interference with existing orders.

2. *Reports of Explorations and Surveys to ascertain the most practicable and economical route for a railroad from the Mississippi river to the Pacific ocean.* These reports will make twelve large quarto volumes, (including one volume of charts,) elaborately illustrated. The Senate has ordered the printing of 12,400 copies, and the House 11,520 copies. The printing of eight volumes has been completed; the ninth and tenth has been nearly finished; the eleventh, (comprising the narrative of Governor Stevens' expedition,) has not yet been commenced, nor the copy furnished; and the printing of the twelfth, being the volume of charts, has not yet been commenced, though the whole expense of engraving these charts on copper, amounting to about \$45,000, has been incurred. Inasmuch as the volume comprising the narrative of Governor Stevens' expedition will not be prepared in time to commence the printing previous to the next session of Congress, and as a disposition is manifested to curtail all expenditures in reference to this work that can with propriety be made, your committee submit a resolution herewith which dispenses with the publication of this volume until Congress shall otherwise direct. The cost of this volume is estimated at \$103,000.

The committee also recommend that the number of copies of the volume of charts be reduced from 23,920 to 3,920 copies, which will give the usual number of copies for the two Houses of Congress, 500 copies for the use of the War Department, and 50 copies heretofore ordered by the Senate to each of the officers commanding expeditions. This will effect a saving of upwards of \$80,000. Should the wants of the government hereafter require an additional number of these charts, they could be procured at small expense, as the plates from which they are printed is the property of Congress, and will be preserved for future use.

3. *Report of the United States Commissioner to survey the boundary line between the United States and the republic of Mexico,* ordered to be printed at the first session of the thirty-fourth Congress. This report comprises two volumes, the first of which has been completed. Of the second volume, the Senate has ordered the printing of 2,000 extra copies; and if the order of the House to print the report included also the printing of the second volume or appendix, there are required for the House 10,000 extra copies. This volume will contain about 500 pages of text, and 282 pages of illustrations, and its estimated cost is \$107,000. The engraved plates for this volume have all been contracted for, under the authority of the Secretary of the Interior, and are nearly completed.

As the number of copies ordered appears to be more than the public interest requires, the committees recommend that it be reduced to 1,000 extra copies for the Senate and 3,000 for the House, thereby effecting a saving of about \$60,000.

There are also six large index maps engraved on copper; but as they are not intended to be bound in either of the volumes of the report, and as there appears to be no *general* interest attached to them, it is recommended that they be turned over to the Secretary of the Interior, who could have copies printed from time to time, as the public interests might require.

The amount required to complete the printing and binding of these three reports, with the illustrations, is estimated at \$643,423. To stop all of them at present would effect an apparent saving of probably \$400,000; but this would cut off entirely the 4th and 5th volumes of the Astronomical Report, four volumes of the Pacific Railroad Reports, and the 2d volume of the Mexican Boundary Report, and would render wholly valueless printed and engraved matter, which has either been paid for or yet to be paid for, amounting to more than half a million of dollars; much of which, doubtless, is absolutely necessary for the uses of government, and all of which is valuable or interesting to the public. If, however, the recommendations of the committee meet the approbation of Congress, the sum of \$306,000 will complete all the reports in reduced numbers, (though it is believed sufficiently large for all necessary purposes,) and a saving thereby effected of about \$330,000.

The committee, therefore, recommend the adoption of the following resolutions:

Resolved, That the resolution of the House of Representatives of the 14th February, 1855, directing the printing of 10,000 extra copies of the Reports of the Explorations and Surveys to ascertain the most practicable and economical route for a railroad from the Mississippi river to the Pacific ocean, be so far modified as that no extra copies of the volume of charts be printed for distribution by the members of this House; and that the printing of the volume comprising the narrative of the expedition under Governor Stevens be suspended until the further order of this House.

Resolved, That the resolution of this House of 15th August, 1856, which directs the printing of 10,000 extra copies of the report of Major Emory on the Mexican Boundary Survey, be so far modified as to authorize the printing of 3,000 extra copies, for distribution by the members of this House, of the 2d volume or appendix to said report.

The committee would further report, that the sums necessary to complete the works herein specified, in accordance with the plan recommended by your committee, are as follows:

For printing ordered by the Senate and House of Representatives during the 33d and 34th Congresses and paper for the same, \$80,000.

For binding documents ordered to be printed by the House of Representatives during the 33d and 34th Congresses, and for engravings, lithographs, and electrotypes for the same, \$123,000.

For binding documents ordered to be printed by the Senate during the 33d and 34th Congresses, and for engravings, lithographs, and electrotypes for the same, \$113,000.

SAMUEL A. SMITH, *Chairman*.

O. R. SINGLETON,

JOHN. H. NICHOLS,

Joint Committee of Printing on part of the House.

The following appendix, made up in the office of the Superintendent of Public Printing, exhibits the condition of each of these works in detail:

Statement showing the printing, &c., ordered by the Senate and House of Representatives during the 33d and 34th Congresses, which is unfinished; the estimated cost for completing, &c.

1. THE REPORT OF THE UNITED STATES NAVAL ASTRONOMICAL EXPEDITION TO CHILI, IN SIX QUARTO VOLUMES.

The first, second, and sixth volumes of this report have been printed, bound, and paid for. The third volume is nearly completed, about two hundred and fifty pages only, with the binding, yet to be paid for. The fourth and fifth volumes (which will complete the work) are progressing simultaneously, about 32 pages having been printed. The Senate has ordered the printing of 1,000 copies, in addition to the usual number, making in all 2,400 copies; and the House has ordered 2,000 copies, in addition to the usual number, making in all 3,520 copies. Lieutenant Gilliss, U. S. N., who has charge of the work, states that the fourth and fifth volumes will make about 700 pages each, without illustrations of any kind.

It is estimated that the entire cost for completing this report, for both Houses of Congress, will be as follows:

For the Senate.

Volumes.	Printing.	Paper.	Binding.	Total.
Residue of 3d volume.....	\$2,273 14	\$693 00	\$2,000 00	\$4,966 14
Volume 4.....	6,204 60	1,906 80	2,000 00	10,111 40
Volume 5.....	6,204 60	1,906 80	2,000 00	10,111 40
	14,682 34	4,506 60	6,000 00	25,188 94

For the House of Representatives.

Volumes.	Printing.	Paper.	Binding.	Total.
Residue of 3d volume.....	\$2,440 41	\$940 80	\$3,330 00	\$6,711 21
Volume 4.....	6,722 76	2,805 60	3,330 00	12,858 36
Volume 5.....	6,722 76	2,805 60	3,330 00	12,858 36
	15,885 93	6,552 00	9,990 00	32,427 93

RECAPITULATION.

Cost of printing.....	\$30,565 10
Cost of paper.....	11,058 60
Cost of binding.....	15,990 00
Total	<u>57,613 70</u>

2. EMORY'S MEXICAN BOUNDARY REPORT, IN TWO VOLUMES.

The first volume of this report has been printed and paid for, with the exception of the binding, and a small amount for the illustrations, as follows :

For the Senate.

Amount due for engraving.....	\$1,856 98
Amount due for binding.....	5,104 36
	<hr/>
	. 6,961 34
	<hr/> <hr/>

For the House of Representatives.

Amount due for engraving.....	\$1,404 42
Amount due for binding.....	8,236 92
	<hr/>
	9,641 34
	<hr/> <hr/>

There are also six large index maps, engraved on copper, and now in this office ; but, as they are not intended for binding in either of the volumes of the report, they have not been printed. The cost of printing these will be about 42 cents per set ; or, for the whole edition of 6,400 copies for the Senate, and 11,530 copies for the House, the aggregate cost will be about \$7,500, without binding. It is supposed, however, that no necessity exists for the printing of these large numbers ; but I respectfully request that I may receive instructions as to the number, if any, which shall be printed ; how they shall be bound or otherwise secured ; and what disposition shall be made of them. Perhaps, as there appears to be no general interest attached to these maps, and as they are not to be bound in the volumes, it would be as well to turn the plates over to the Secretary of the Interior, who could have copies printed from time to time, as the public interest might require.

Volume 2, (or appendix.)—The Senate has ordered the printing of 2,000 copies of this volume, in addition to the usual number, making in all 3,400 copies. If the order of the House to print the report, included also the printing of the appendix, (which is the understanding of this office,) there are required for the House, in addition to the usual number, 10,000 copies, making in all 11,530 copies. The Secretary of the Interior, in a letter to this office, estimates this volume "to contain about 500 pages of close matter [text] and 282 pages of illustrations, 25 of which, it is understood, are to be colored." The engraved plates for this volume have all been contracted for under the authority of the Secretary of the Interior, and many of them have been completed. It is understood that, when finished, they are to be turned over to this office for printing such number of copies as Congress might order.

BOOKS ORDERED TO BE PRINTED

The following is the estimate for printing the order of the Senate (3,400 copies) and 11,530 copies for the House of Representatives.

	Senate.	Ho. of Reps.
For printing	\$2,563 06	\$7,044 16
For paper.....	1,950 41	6,725 32
For binding.....	2,784 44	8,236 92
For printing 257 plates, plain.....	5,282 40	17,779 96
For printing 25 plates, colored	6,375 00	21,618 75
For paper for 252 plates.....	6,120 00	20,728 00
	25,075 31	82,132 41

The aggregate amount for printing the number above mentioned will, therefore, be \$107,207 72.

About sixty pages of this volume (being all the copy of it received at this office) have been printed. The illustrations, I understand, have nearly all been engraved, but none of them have yet been printed.

3. THE PACIFIC RAILROAD REPORTS, IN ELEVEN VOLUMES

The Senate has ordered the printing of 12,400 copies, and the House 11,520 copies, of these reports. All of them have been printed, except the 9th, 10th, and 11th. The 9th and 10th volumes, it is expected, will make about 800 pages each, exclusive of illustrations, 150 pages of the former and 300 pages of the latter having been already printed. The 11th volume is to be composed principally of charts, the plates for which are all under contract and in the hands of the engraver, though no contract has yet been authorized for printing them. The cost for completing this work may be estimated as follows:

For the Senate.

For printing.....	\$18,464 00
For paper.....	25,200 00
For illustrations, exclusive of the volume of charts.....	22,567 60
For binding, exclusive of the volume of charts.....	55,430 20
	121,661 80
For printing the volume of charts and maps, paper	\$43,468 00
For binding the same.....	9,684 20
	53,152 20
	174,814 00

For the House of Representatives.

For printing.....	\$18,000 00
For paper.....	24,600 00
For illustrations, exclusive of the volume of charts.....	7,738 00
For binding.....	41,000 00
	<hr/>
	91,338 00
For printing the volume of charts and maps, paper for same	43,000 00
For binding the same.....	10,236 00
	<hr/>
	144,574 00
	<hr/>

If the foregoing reports are to be completed in accordance with the original orders, the cost will be about as follows :

RECAPITULATION.

	Printing.	Paper.	Engravings.	Binding.	Total.
FOR THE SENATE.					
1. Report of the United States Astronomical Expedition to Chili.....	\$14,682 34	\$4,506 80	.....	\$6,000 00	\$25,189 14
2. Emory's Mexican Boundary Report.....	2,563 06	1,950 41	\$22,322 38	7,888 80	34,724 65
3. Pacific Railroad Reports.....	18,464 00	25,200 00	66,035 60	65,114 40	174,814 00
Unpaid accounts, not included in the above.....	.....	.....	8,000 00	23,848 00	31,848 00
Total for the Senate.....	35,709 40	31,657 01	96,357 98	102,851 20	266,575 59
FOR THE HOUSE OF REPRESENTATIVES.					
1. Report of the United States Astronomical Expedition to Chili.....	15,885 93	6,552 00	.....	9,980 00	32,417 93
2. Emory's Mexican Boundary Report.....	7,044 16	6,725 32	66,373 03	16,473 84	96,616 35
3. Pacific Railroad Reports.....	18,000 00	24,600 00	50,738 00	51,236 00	144,574 00
Total for the House.....	40,930 09	37,877 32	117,111 03	77,699 84	273,618 28
Total for the Senate.....	35,709 40	31,657 01	96,357 98	102,851 20	266,575 59
Aggregate.....	76,639 49	69,534 33	213,469 01	180,551 04	540,193 87

NOTE.—Since this statement was prepared, this office has been informed that an additional volume of the Pacific Railroad Reports would be furnished, the estimated cost of which is \$103,229 13.

that an additional volume of the Pacific Railroad Reports would be furnished, the

Remarks.

it will be seen that the aggregate amount required to pay for work already executed, and to complete these reports, is about \$100,000. There are no funds applicable either for printing, paper, binding, or binding of these reports for the Senate; though I am aware there are very considerable amounts for lithographing and engraving for the House yet unexpended and applicable to these purposes.

It appears to me that the printing of these reports has progressed so far as to render it inexpedient to discontinue either of them. Four volumes of the Astronomical Report have been printed, three of which have been bound; two remain to be printed, and three are yet to be printed; the aggregate cost for which will be about \$57,000. Drury's Mexican Boundary Report, proper, has been printed and bound; but there remains a volume of appendix, a few pages only of which have been printed. The order of the Senate is for 3,400 copies of the appendix, at a cost of about \$25,000; and of the House 1,530 copies, at a cost of about \$82,000—making a total of about \$107,000. The numbers of this volume ordered by both Houses of Congress might probably be reduced one-half, or more, thus making a saving of about \$50,000.

A very large portion of the estimated cost of the Pacific Railroad Reports (with the exception of the volume of charts) has already been expended, and little more than the binding of two or three volumes can be saved by now stopping the work. All the illustrations have been printed or are now in the printer's hands, all the volumes, except the 9th, 10th, and 11th, are bound, or ready for binding, and a large portion of the 9th and 10th volumes are printed.

It seems to me, however, that a very considerable curtailment in the numbers ordered to be printed of the volume of charts might be made without detriment to the public interests, and certainly at a great saving of money. The number ordered by the Senate is 12,400 copies, and by the House 11,520, at a cost of about \$106,000. This volume, being composed almost, if not entirely, of maps, possesses no interest to the general reader; and it may, therefore, be worthy of consideration, whether the number ordered may not be reduced one-half, and thus a saving of \$50,000 effected.

I regret that my information will not enable me to promise the completion of these reports before the assembling of the next session of Congress. Could this office be furnished with the copy in time, there would be no difficulty in having the work printed, bound, and delivered before the expiration of the year.

In conclusion, I would recommend that appropriations be inserted in the general appropriation bill for the completion of these reports.

The appropriations for engraving and lithographing, and for binding, for the Senate, having been entirely exhausted, it will be necessary also to provide for these expenses for the present session. The

usual appropriation of \$45,000 for the former and \$50,000 for the latter purpose, it is believed, will be sufficient.

GEO. W. BOWMAN,
Superintendent.

OFFICE SUPERINTENDENT PUBLIC PRINTING,
April 6, 1858.

P. S.—Since the foregoing statement has been prepared, the chairman of the House Committee on Printing has requested that an approximate estimate be made of the saving of expense that would be effected by printing the regular or usual numbers only of the documents mentioned, (1,420 for the Senate and 1,520 for the House,) and rescinding the several orders for extra copies. I have caused this estimate to be made with the following results:

Lieutenant Gilliss' Report.—By rescinding the order for extra copies of the two volumes of this report yet to be printed, (1,000 for the Senate and 2,000 for the House,) a saving in the cost of paper, printing, and binding may be effected of about \$10,000.

Pacific Railroad Reports.—All the volumes of these reports, as has been heretofore stated, are printed, with the exception of the 9th, 10th, and 11th. A very large portion of the text and all the illustrations for the 9th and 10th volumes have either been printed or are now in the contractor's hands; and, therefore, to stop these volumes now with the completion of the regular numbers only, a saving of but little more than the binding of two volumes could be effected, and all the illustrations and other matter which have been printed for them, at very great expense, would be utterly useless. The only saving that can now be made with propriety, it seems to me, is in the volume of charts, as hereinbefore suggested. This volume is estimated to cost about \$4 50 per volume, in addition to the expense already incurred for engraving the plates. The number of copies ordered is 12,400 for the Senate and 11,520 for the House. These numbers can be reduced at the pleasure of Congress, at a saving of about \$4 50 per volume.

Emory's Mexican Boundary Report.—The second volume of this report, and six charts not to be bound in either volume, yet remain to be printed. If the orders for extra copies are rescinded, a saving will be effected of about \$70,000, the estimated cost of the whole number ordered being \$107,000. It has been hereinbefore suggested that the number of extra copies for each House be considerably reduced.



CASE OF R. B. HACKNEY.

MAY 13, 1858.—Ordered to be printed, and its further consideration postponed till Monday next.

Mr. JACOB M. KUNKEL, from the Committee on Accounts, made the following

REPORT.

The undersigned, Committee on Accounts, being required by its 102d rule to "superintend and control the expenditures of the contingent fund of the House of Representatives," and "to audit and settle all accounts which may be charged thereon," &c., having had under consideration the accounts of persons said to be employed by the Doorkeeper of the House of Representatives, report:

That prior to the commencement of the present session of Congress the Doorkeeper of the House of Representatives was authorized, by resolutions of the House, passed from time to time, to make the following appointments, viz: one superintendent of the folding room; one superintendent, and one assistant superintendent of the document room; one messenger in charge of the Hall of Representatives, with salaries ranging from \$1,700 to \$1,800 per annum, and thirteen other messengers, with salaries ranging from \$1,200 to \$1,500 a year. On the 23d of December last, on the motion of a member from Virginia, (Mr. Faulkner,) six additional messengers were allowed him, as it was very properly supposed that the comfort of the members required an increase in these assistant officers, after the House had removed its sittings to the present hall. The total number of this class of officers to be appointed by the Doorkeeper is therefore limited by law to twenty-three. Notwithstanding this express limitation of his authority and power, the Doorkeeper, it is believed, has issued his appointments to thirty or more persons, who claim compensation for their services as messengers of the House. Twenty-three of these messengers, as above stated, are returned by the Doorkeeper on his pay-rolls, monthly, with the receipts of the parties named therein attached, who are regularly paid the proportions of annual salaries due each of them, respectively. It is known, however, to the undersigned that some of them are not performing the customary duties belonging to the nature of their employment, and for which they are paid. Three of them are detached and constantly engaged as book-keepers and assistant clerks

in the folding room; one of them is a private secretary or clerk of the Doorkeeper, and two others are used as firemen to the furnaces in the vaults of the Capitol under the old Hall of Representatives. Whilst, on the other hand, persons who are known to be daily in attendance as messengers and assistant doorkeepers during the sittings of the House, and who attend upon the several committee rooms, not being returned by the Doorkeeper upon his regular monthly pay-rolls, have received no compensation for their services, but depend upon the grace and bounty of the House for remuneration. This gross abuse of the confidence and trust reposed by the House in one of its chief officers, cannot be too severely censured, and, in the judgment of the undersigned, requires an immediate remedy. He has been admonished again and again to correct these abuses, but without effect, as he still persists in acting against both usage and law, and openly defies the control of this committee.

Abuses of a similar or worse nature exist in the folding room. It will be seen by reference to "a statement showing the names of each person employed by the Doorkeeper of the House of Representatives of the United States, the nature of their employment, time appointed, amount of salary paid each one, and the *authority of the same*," (Mis. House Doc. 109,) made by Mr. R. B. Hackney, Doorkeeper, in response to a resolution of the House, that he represents the unusually large number of laborers and folders employed there, amounting in the aggregate to 34, as *by authority of the Committee on Accounts*. Such is not the case. That statement made to the House is false.

By resolutions of the House of 8th August, 1854, December 23, 1857, the Doorkeeper is authorized to employ eight laborers about the hall, and in attendance to the cloak rooms, &c., he nevertheless represents the committee as giving him authority to employ eleven.

He had instructions from said committee to employ not more than four regular folders, at \$2 50 per day. He has reported the committee to the House as his authority for the employment of six at that price. The salaries of the four regular folders authorized by the committee amount to \$300 per month, which, it was supposed, would be sufficient to defray nearly one-half the usual expenditures heretofore incidental to the folding room.

The economical object of your committee has been entirely frustrated, and the expenditures then increased from an average amount of \$600 or \$800, to \$2,000 or \$2,500 per month. Here, too, the regular folders, who are returned on the pay-rolls, and are paid as such, do not perform any such duty; but a throng of piece folders, unauthorized by your committee, are employed by Mr. Hackney, who permits false returns to be made upon the books of the amount of piece work done, and returns false accounts of the same, to be audited and settled by your committee, as is shown by the following comparative table, made out by the Clerk of the House, and contrasting the number of documents actually delivered during the three months ending May 1st, by the Superintendent of Public Printing, and the number alleged and returned as folded by the Doorkeeper.

OFFICE OF THE HOUSE OF REPRESENTATIVES U. S.,

May 6, 1858.

SIR: In compliance with your expressed wish I have examined the subject of folding documents for the months of February, March, and April last, and find that the number of documents folded in the folding room of the House of Representatives for each of the months above named, according to the pay rolls returned to this office, to be as follows, viz: for February, 73,274; March, 194,539; extra documents, 2,329; total, 196,868; and, for April, 30,804; extra documents, 19,708; total, 50,512—for all of which I have declined payment, for the reason that, according to the returns as furnished by the Superintendent of Public Printing, there appears to be too great a discrepancy between the number of documents purported to have been folded and the number actually delivered by the said Superintendent.

Below I submit a comparative table showing the number of documents delivered during the last three months by the Superintendent, and the number alleged to have been folded, as returned by the Door-keeper:

Delivered by the Superintendent in the month of—	Alleged to have been folded during the month of—
February.....45,921	February.....73,274
March.....45,935	March.....196,868
April.....30,790	April.....50,512
Total.....122,646	Total.....320,654

Or, in other words, there appears to have been an excess of 198,008 documents folded over the number as delivered by the Superintendent.

Very respectfully,

J. C. ALLEN,

Clerk House of Reps. U. S.

Hon. J. M. KUNKLE,

Committee on Accounts.

There are other charges of mal-practice in office and venal character preferred against Mr. Hackney, but your committee conceive that it would not be strictly proper to report the declarations of Mr. Hackney's subordinates, over whom he domineers most unjustly.

In conclusion, the undersigned Committee on Accounts are unanimous in believing Mr. R. B. Hackney unworthy of the trust reposed in him by this House. They believe that he is either entirely and hopelessly incompetent to perform the duties belonging to his office, or shows a wilful and deliberate purpose to pervert improperly and abuse the power with which he is invested.

Your committee, therefore, unanimously recommend the adoption of the following resolution:

Resolved, That R. B. Hackney, the Doorkeeper of the present House of Representatives be, and he is hereby, dismissed forthwith from that office.

JOHN DICK,
JOHN A. SEARING,
FRANCIS E. SPINNER,
J. M. KUNKLE,
PAULUS POWELL.

OHIO CONTESTED ELECTION—VALLANDINGHAM *vs.*
CAMPBELL.

MAY 13, 1858.—Ordered to be printed.

Mr. THOMAS L. HARRIS, from the Committee on Elections, submitted
the following

R E P O R T .

The Committee of Elections, to whom was referred the memorial of Clement L. Vallandigham, contesting the right of Hon. Lewis D. Campbell to a seat in the House of Representatives as a member of the thirty-fifth Congress from the third congressional district of the State of Ohio, have had the same under consideration and have directed me to report :

That they have given the subject referred to them a most careful and laborious examination, have heard the arguments of the parties respectively and their counsel, and have sought to arrive at a just conclusion in the premises. But, from the points involved and the character of the testimony adduced, neither the committee nor a majority of their number have been able to agree upon any proposition for the action of the House. Four members of the committee are of opinion that the contestant is entitled to the seat. Four, likewise, are of opinion that the sitting member is legally elected and should be retained in the seat ; and one member of the committee recommends that the seat be declared vacant, and the governor of Ohio be informed thereof. The committee ask that the views of their minorities, respectively, accompanying this report, may be received by the House.

Mr. L. Q. C. LAMAR, from the Committee of Elections, submitted the following

VIEWS OF A MINORITY OF THE COMMITTEE.

The undersigned members of the Committee of Elections, to whom was referred the memorial of Clement L. Vallandigham, contesting the seat of Lewis D. Campbell as the representative from the third congressional district of Ohio, having examined and considered the same, together with the evidence presented therewith, beg leave to submit to the House the following facts in the case:

The election here contested was held on the 14th of October, 1856, and by ballot. The district is composed of the counties of Montgomery, Butler, and Preble. The whole number of votes cast at that election for representative in Congress was 18,657, of which the returned member, the candidate of the republican party, received 9,338, and the contestant, the candidate of the democratic party, 9,319, as the same were returned to the secretary of the State of Ohio, thus showing a majority for the former of 19 votes. The notice of contest, under which the testimony was taken, was served upon the returned member on the 29th of December, 1856, and the answer thereto on the 27th of January, 1857. The taking of testimony was commenced by the contestant on the 2d of February, 1857, and closed on the 28th of March following; and the taking of testimony by the sitting member was commenced on the 18th of March, 1857, and closed on the 27th of the same month. Upon the testimony thus taken, neither party offering any other evidence except the abstract hereafter referred to, the committee proceeded to hear and determine the case, the amplest opportunity for argument and investigation being allowed to both parties.

At the outset several objections of a technical character were presented by the returned member to the contestant's case, and the evidence by which it was supported.

It was objected that the notice was not in compliance with the law, in that it did not specify with sufficient particularity the "grounds" of the contest, the main point relied on being that it did not set out the names of the illegal voters objected to. The undersigned believing that the law did not require any more to be set forth than the *class* to which the voters belonged, especially as by express provision it required each party to furnish ten days in advance the names of the "witnesses" proposed for examination, are of opinion that this objection is not valid. In the first case under the law, the Committee of Elections determined the same point in the same way.—(Wright *vs.* Fuller, 1852, House Reports, 136.) In the last Congress the question presented in its strongest form by the answer of the returned delegate in the case of Otero *vs.* Gallegos, House Reports, 1855-'56, was distinctly decided by the committee against the objection, and the House endorsed the report.—(House Reports, vol. 1, No. 90, page 2.) The undersigned find also that in cases arising in judicial courts, under

similar statutes, the same objection has been overruled. In other respects, also, they are of opinion that the notice is quite as minute in its specifications as is requisite, or generally possible. It will be observed that the answer of the returned member is in the same form. They annex the notice and answer as Appendix No. 1.

It was objected that the committee ought not to receive and consider the "abstract" of votes returned to the office of the Secretary of State, for the returned member and the contestant, because the document was not "obtained" or "taken" within the sixty days limited for "taking testimony." This objection, in the opinion of the undersigned, is destitute of force—without deciding whether it was not rather the duty of the sitting member than of the contestant to produce it before the committee—they are clearly of the opinion that the negative provision as to testimony, in the 9th section of the act of 1851, was intended to apply and does apply solely to the testimony of *witnesses*, or at most to such writing as can be proved *only* by the examination of witnesses; and that documentary evidence, at least that which proves itself, may be obtained at any time after the sixty days and produced before the committee at the hearing. The "abstract" in question purports to come from the proper office and officer, and bears upon it the impress of the great seal of the State, than which there can be no higher evidence of authenticity. In confirmation of this view, the undersigned find that in a majority of cases since the act of 1851 the abstract or copy of the returns has been "obtained or taken" subsequent to the sixty days limited in the act.

It was objected that the poll-books of the several wards and townships, or certified copies thereof, were not produced in evidence, and that until their absence was accounted for no proof could be received to establish the fact that the voter whose right is disputed did vote at the election. So much of the statutes of Ohio as relate to this subject will be found in Appendix No. II. It will be observed that as to the poll-books required to be sent to the clerk of the county court no provision is made anywhere for furnishing copies for any purpose; and these poll lists are not within the acts of Congress touching the authentication of records. It nowhere appears that any part of the object of the law in requiring them to be kept is that they may furnish evidence in criminal prosecutions or upon contested elections, especially as they are not anywhere declared to be *records*; the chief purpose, no doubt, is to enable the judges of elections, and others, afterwards, to compare the number of ballots in the box with the number of names on the poll list, and thus to stand as a check upon frauds. The objection then founded upon their non-production must be decided by general principles and the precedents in Congress. The undersigned are of opinion that the poll lists are not only not the sole and best evidence to prove that a particular person voted, but that they are not themselves sufficient. Parol evidence of identity is always necessary; that the name of the voter is on the list is only corroborative evidence; it is only an item of evidence. In *Newland vs. Graham*, 1836, the committee received evidence that persons voted whose names were not on the poll-books at all; and in the testimony here, to explain a discrepancy between the ballots and the poll lists in

one of the townships, evidence is offered by the returned member that two persons voted whose names are alleged not to have been upon the list. The undersigned are sustained in this view of the case by analogous decisions in courts of law, where it has been repeatedly adjudged that where even the law requires for purposes of evidence a register or list of the births, marriages, deaths, and the like; the fact in criminal cases may yet be proved by parol, (1 Greenleaf on Evidence, page 86, and cases there cited.) The undersigned find that the usage in Congress has not been uniform upon this subject; but they find, also, that the direct question was raised and passed upon in the great New Jersey case, in 1840, where the committee unanimously received parol evidence similar to that offered here. In the report of the majority of the committee, it is said: "The first proposition involved the inquiry whether the vote was actually cast at the polls, and for the ascertainment of this point the committee necessarily resorted to parol proof as the best evidence the case would admit, the laws of New Jersey not requiring the poll lists to be preserved as a *record* of the actual voters," (3 House Reports, 1839, 1840, No. 541, page 695.) A comparison of the provisions of these laws with the statutes of Ohio, the requirements of each as to the poll lists being nearly identical, will conclusively establish that the decisions and precedents are precisely in point; the statutes of both States upon this subject will be found in appendix No. II.

Objection was also taken to the admission in evidence of declarations or admissions by voters, here disputed as illegal, touching their qualifications and the candidate for whom they voted. Some of the declarations objected to, the undersigned are of opinion, were such as are received daily in courts of common law, relating to residence or being part of the *res gestæ*; others they believe to be competent, upon a reasonable application of the usual rules and principles of evidence by analogy and according to their spirit. Neither the committee nor the House is bound by these rules in their letter and strictness, but should proceed upon more liberal principles in the investigation of truth. They regard a contested election not as a mere private litigation, but a great public inquiry, where the real parties are not so much the returned member and the contestant as the voters of the district, and they are content to rest their opinion on this question upon the reasoning and upon the usages and solemn decisions of Parliament and Congress for years past, inasmuch as the distinction claimed to exist between an ordinary forensic court and a legislative assembly is recognized not only in Parliament and Congress, but by the courts themselves, and from a very early period. The admissibility of evidence consisting of the declarations of voters as to any matter concerning their own voting has been settled in the British Parliament repeatedly and uniformly for one hundred and fifty years, and is no longer to be questioned. These decisions are to be found in the numerous volumes of reported election cases and of treatises upon this subject. The rule has been recognized also in approved books of law: 3 McCord's Reports, 233, note; Phillips' Evidence, with Cow. and Hill's notes, 322. It is sometimes treated as an exception to the rule, excluding the hearsay declarations of third persons; but generally

it is put upon the ground that in elections, contested because of illegal votes being received, *each voter challenged is a party to the proceeding*, and, therefore, whatever he says about his own voting is an admission or confession. In Congress, also, while the undersigned find several precedents distinctly adopting or recognizing the rule, they find none where it has been decided the other way, except in *Newland vs. Graham*, 1835-'36. Against this they refer to the following: *Contested Elections*, 80, 260, 272, 282, 258, 367, 750; the Broad Seal case, 1840, 3 House Reports, No. 541, pp. 699 and 749; *Farley vs. Runk*, 1845-'46, and *Monroe vs. Jackson*, 1847-'48. In England, as in some of the States of this Union, the voting being *viva voce*, a class of declarations continually occurring in States where elections are by ballot are there, of course, almost unknown. We refer to declarations by voters as to how they voted. One case, however, accidentally occurred in Parliament where the poll list did not show for whom the party had voted, and so his statement *as to how he intended to vote*, made to a third person, was allowed to be given in evidence: the Windsor case, 1807; P. and O. election cases, 173. No distinction has been set up in this country, nor do the undersigned perceive any; both are but hearsay, and the latter affects the party as much and in the same way as the former; and as the voter cannot be compelled to testify as to his qualifications, so neither can he as to how he voted.

The American cases have, indeed, been mainly directed to the question of receiving the declarations of voters. As to the latter, and beside several prior cases, the point was expressly and deliberately decided in the great New Jersey case, in 1840, usually known as the Broad Seal case; and the evidence was unanimously received, and a large number of votes determined upon it. This precedent has been generally approved ever since, and the undersigned attach more importance to it than usual, because it was unanimous in a highly partisan case, and because of the great ability and distinction of the gentlemen who composed the committee. The same rule of evidence as to declarations of voters, both as to qualification and vote, was deliberately adopted by the legislature of Maryland in 1819, as also in the legislatures of other States and courts having a special jurisdiction to try contested elections. As to a number of voters whose declarations are given in evidence, it appears upon the papers and testimony that their attendance as witnesses could not be procured; but it is not necessary in such cases to first call the voter and see if he will claim his privilege of refusing to answer. It was not done in any of the cases decided in the British Parliament. It is not necessary in settlement of cases where the declarations of the parishioner may be given in evidence, (1 Greenleaf on Evidence, § 175;) and the Supreme Court of the United States has expressly decided that where a witness cannot be compelled to answer he need not be called.—(6 Peters' Reports, 352, 367.)

So much of the constitution and laws of Ohio as relate to the subject of elections, and are necessary to an understanding of these cases, will be found in appendix No. III. By the rules and requirements therein laid down, or where they are silent or in doubt, by the principles and the maxims of common law and common sense, or the usages and de-

cisions of Congress and of judicial courts, applied in their spirit and by analogy, the undersigned have undertaken to test the several questions presented in this case.

The undersigned now proceed to dispose of the votes disputed or claimed by the parties respectively.

The contestant claims three additional votes because of ballots improperly rejected by the judges of election, and disputes the legality of seventy-three votes polled for the returned member. The latter claims seven additional votes because of ballots improperly rejected by the judges of election, and disputes the legality of nineteen votes polled for the contestant. The counsel for the returned member conceded in the argument before the committee that the two ballots rejected in Lemon township, Butler county, ought to be added to the contestant's poll; and the undersigned are clearly of opinion that the ballot rejected in the second ward, Dayton, ought to be added also. The intention of the voter to vote for the contestant seems plain upon a mere inspection of the original ticket. The returned member's counsel conceded, also, that the four ballots rejected in Washington township, Montgomery county, were properly rejected as double ballots. The undersigned think that the one ballot rejected in that township, because the sitting member's name was twice written on it, ought to be added to his poll; but they refuse to add the two rejected in Harrison township, in the same county. The proof offered by the returned member, alone and without cross-examination, shows that when the ballots were first taken from the box the judge, when in the act of lifting them out, said: "Here is a double ticket," (testimony 145, 148;) and that after full examination and discussion it was so adjudged at the time, and with the ballots before them. The apparent discrepancy between the number of ballots in the box and the names on the poll list was accounted for at the time; and now, in the testimony, it appears to be satisfactorily explained. In the absence of the ballots, and upon the facts disclosed, they are unwilling to reverse the decision of the judges.

Minors.—Of minors the contestant disputes three votes and the sitting member four. The undersigned find all these votes to have been illegal, and voted as respectively claimed by the parties, and they deduct them accordingly.

Persons of unsound mind.—Of persons not of sound mind the contestant disputes three votes, and the returned member four. As to Robert Oliver, among the latter, the undersigned find no proof; and they are of opinion that the others are illegal upon both sides, and that they were cast respectively as claimed, and they deduct them accordingly.

Of aliens, the contestant disputes four votes, and the returned member three. The undersigned find three of the former to be illegal, and that they were cast for the sitting member, and two of the latter, and that they were polled for the contestant, and they deduct them all accordingly. They do not find the vote of John M. Rein to be illegal. Waiving the question whether the probate court in Ohio has authority to naturalize aliens, there is no legal or satisfactory proof before them that Rein had a naturalization paper issued

by that court. The counsel for the returned member does not claim it as a bad vote.

Of non-residents of the ward or township, two votes are disputed by the returned member, and none by the contestant. It is not denied that both these voters were legal electors of the county; but, having voted, though not fraudulently, but by mistake, out of their proper wards, the undersigned find the votes illegal and deduct them from the poll of the contestant.

Of non-residents of the county, the contestant disputes thirteen votes, and the returned member none. Of these the undersigned find six, to have been illegal, and that they were polled for the sitting member, and they deduct them accordingly.

Of non-residents of the State, the contestant disputes thirty-one votes and the returned member six. Of the latter the undersigned find four to be illegal, and that they were cast for the contestant, and they deduct them from his poll; of the former they find twenty-five to be illegal, and that they were polled for the returned member, and they deduct them accordingly. A table of the names of the voters deducted above, from each poll respectively, will be found annexed to this report.

Of votes cast by mulattoes and persons of color, the contestant disputes sixteen, and the returned member none. The undersigned find that the sixteen persons named in the testimony and described as above, (pages 105, 121, 125, 126, 127,) did vote at the election, four of them in Hamilton, and twelve in Oxford township, Butler county; and that fifteen of them voted for the returned member; and that as to the remaining one, there is no proof on either side as to how he voted. The undersigned are clearly of opinion that they are not legal voters under the constitution and laws of Ohio. That they are of the race or class of persons described in the sixteenth specification of the notice of contest is made clear by the testimony. Mr. Milliken, a judge of election in the second ward, Hamilton, describes the four who voted there, (Testimony, 105,) as "persons of color or mulattoes," and says there was in each "a visible admixture of African blood." "In regard to Anderson, I would think he had more white than black blood; in reference to the others I would think it doubtful whether the white or black blood predominated." Anderson admits himself to be of mixed blood, and says of two others that they had a visible admixture of negro blood; he thinks there is none visible in Mitchell, but admits "*that in his domestic relations he associates with colored people.*" But Mitchell is one of those testified to by Milliken as a person of color or a mulatto, it being doubtful whether he was nearer black or white. William J. Mollineaux describes the twelve who voted at the Oxford precinct, (Testimony, 125,) as mulattoes and persons of color, and three of them he particularizes as mulattoes. Joseph D. Ringwood says of the whole twelve, (Testimony, 126,) "they are all of mixed negro blood; according to my opinion they are persons of a visible admixture of negro blood, they are so admitted generally in the community and also by the judges of election. The matter was discussed before the judges, and the judges decided that these persons had a right to vote because they were more than half white."

Were these mulattoes and persons of color qualified electors in Ohio? The undersigned are clearly of opinion that they were not. The constitution of Ohio, adopted in 1851, requires among other things that the qualified voters shall be "white male citizens of the United States." They are clearly of opinion that men of the African race, of mixed negro blood, having a distinct and visible admixture of African blood, are not white within the meaning of the constitution, and they have no doubt that they are comprehended within the spirit and letter of the decision of the Supreme Court of the United States, in the case of *Dred Scott vs Sanford*, 19 Howard, 393, and therefore not citizens of the United States. Any other doctrine would entitle them to seats upon the floor as members of this House.

That these mulattoes and persons of color, to the number of fifteen, voted for the returned member, the undersigned entertain no doubt. Anderson testifies to his own vote and as to the declaration of two others, his friends, one of whom worked with him; that there was an understanding between him and them that they were to vote and they did vote for the sitting member. As to those who voted in Oxford, Lawrence, one of the twelve, declared to the witness that he voted for the returned member and advocated his election; and the proof as to the others, including Lawrence, though circumstantial, is just such as has been repeatedly received and acted upon by committees and the House. That it is not positive and direct is because the nature of the case, the vote being by secret ballot, does not usually admit of such proof. In the great New Jersey case of 1840, testimony like the following, even as to persons of color, was *unanimously admitted* as both competent and satisfactory, and votes unanimously decided upon it. "I think Patterson was challenged by Van Doren. Van Doren is a whig. I recollect some democrats were in favor of his vote. I do not know how he voted. I do not know what ticket he had. I gave him a democratic ticket, but he did not tell me he would vote it. I do not know what his politics are, or what he professes to be. He said he voted the democratic ticket; he said also he had voted the whig ticket. McWilliams and Drake brought him in; Van Netta advocated his voting; in the dispute the whigs were the men who opposed and the Van Buren men were in his favor. McWilliams, Drake, Van Netta are all strong Van Buren men." In another case, a colored person also, the sole proof consisted of the following: "Ezra Hill, who could neither read or write, being sworn, saith, that he voted in the fall of 1858; he rather thinks it was a whig ticket; he got the ticket of Louis Tucker, and he believes he is a whig." The committee again unanimously deducted the vote from the whig candidate. In *Monroe vs. Jackson*, 1847-'8, there was no proof, as there was none in either of the above cases, of the *politics* of the voters, one hundred and sixty-three in number; but it was shown that they were brought to the polls by democrats; that the officers of the alms house, of which they were inmates, were active democrats, and on the night before the election carried a large number of democratic tickets with the name of the sitting member upon them, together with twenty-four other names, to the alms house, and that they had charge of the omnibus in which these voters were taken to the polls; but it appears also that each of

the inmates of the alms house exercised his right to vote without restraint, that democrats and whigs were furnished with permits without distinction, and all who chose had an opportunity to ride in the omnibus; that a large number of the inmates refused to take democratic tickets at the alms house, and some said they were going to vote the whig ticket; some said they had taken democratic tickets but voted whig tickets and boasted of the deception, and that all did not vote the same ticket. Yet upon this evidence alone the committee reported against the sitting member and in favor of the contestant, and the House ejected the former from his seat. Upon the same kind of evidence alone, the undersigned have deducted the votes of George Bush and Peter Spirk from the poll of the contestant; the proof in one case being that the voter received the ticket from a democrat and that his father, who is the witness, *intended* that he should vote the democratic ticket. (Testimony, 150.) In the other case the voter was brought to the polls by democrats in a carriage bearing democratic flags and emblems. (Testimony, 171, 172.)

What now are the facts and circumstances here before the committee as to these mulattoes and persons of color, and especially the twelve who voted at the Oxford precinct. William J. Mollineaux says as to the twelve, "that those persons known as democrats bitterly opposed their voting; the opposition (the republicans) favored their voting;" and, being asked, "Did the friends of Lewis D. Campbell oppose or favor their election?" he said: "So far as I know, they favored it. * * * I opposed it myself in conversation, and heard others oppose it in conversation." Ringwood also testifies: "*I believe that they were all challenged, from the fact that we, the friends of Vallandigham, had made arrangements to have Dr. Garvin inside at the polls for the express purpose of challenging these identical men.*" Being asked to state "what part the friends of Campbell took with regard to these mulattoes voting," he answered: "*They took the usual part that men do to get up their friends to vote. So far as my knowledge extends—and I saw three or four go up to the polls—they were attended to the polls by the friends of Lewis D. Campbell. One of them, (Lawrence,) in conversation with me, admitted that he had voted for Lewis D. Campbell for Congress, and advocated his election. Cyrus Cowan told me yesterday that he had been forced to go to the polls to vote by John A. Gage, (John A. Gage is a very violent party man, and a friend of Campbell.) I saw Gage come to the polls with Cowan, and urging him to vote.*"—(Testimony, 126.)

Along with this testimony, bearing thus directly upon this point, are several circumstances (disclosed in the evidence and papers of the case) which give color, weight, and directness to it. It appears (Testimony, 106, 127,) that the right of these colored persons to vote was assumed, because they claimed to be *more than half white*.

Ringwood says, as to the Oxford voters, that the matter was discussed before the judges of election, and that they put their decision in favor of their right upon this ground. Two of these judges were understood to be political friends of the sitting member; and in his answer to the notice of contest the sitting member sets down as specification number "9," the following, of which he proposed to

make proof, "that persons *half white and more*, entitled under the laws and decisions of the courts of Ohio to the right of suffrage, *who would have voted for me*, were refused the exercise of that right by the judges of election," (Testimony, p. 21.) Again, the first testimony relating to these colored voters was taken on the 3d of February, 1857, (fifty-five days,) and the last on the 7th of March, (three weeks,) prior to the expiration of the period limited by law for the taking of testimony, and it was taken in the city of Hamilton, where the returned member resides, and where he appeared and cross-examined by counsel. Had any fraud, surprise, or falsehood been practiced in regard to these voters, it would have been natural, as it doubtless would have been easy, to have exposed it; yet no attempt was made by him or his counsel to take rebutting testimony during that long period to prove either that they did not vote at all, or did not vote for him, or disprove the facts set forth in the testimony of the contestant. And further, instead of commencing with the testimony in Butler county, where the majority of these mulattoes and colored persons were alleged to have voted for him, he began and occupied the whole remaining time in Montgomery; and, moreover, in the application filed by him before the committee in January, 1858, ten months after the time for taking testimony expired, (House Report, No. 50,) while claiming and producing proof that one of the sixteen, James E. Robbins, whose vote the undersigned have not appropriated to either side, had declared that he had voted for the contestant, he yet made no assertion or claim, in his showing, that the other fifteen either had not voted at all, or had not voted for him.

From the testimony and these facts and circumstances in the case, and upon the precedents above cited, the undersigned, adopting the language of the committee in the case of *Monroe vs. Jackson*, a case not so strong as this, say that they do not hesitate to believe that these sixteen mulattoes and persons of color, (except, perhaps, Robbins,) above referred to, voted for the sitting member, "they would have to shut their eyes to all the known rules by which individual conduct is judged to come to a different conclusion."

The undersigned annex, in Appendix No. IV, the testimony and journal of the committee in the New Jersey case, 1840; also extracts from the majority and minority reports of the New York case of 1847, 1848.

Upon a review and summary of the whole case the undersigned find the following result:

The whole number of votes cast for the contestant, as appears, was.....	9,319
To this add the three ballots rejected.....	3
	<hr/>
	9,322
Deduct for illegal votes.....	15
	<hr/>
	9,307

The whole number of votes cast for the returned member, as appears by the returns, was.....	9,338	
Add the one ballot rejected.....	1	
	<hr/>	
	9,339	
Deduct for illegal votes.....	55	
	<hr/>	
		9,284
Leaving a majority for the contestant of.....		<hr/>
		23
		<hr/>

The undersigned find that as to nine of the votes, which they have deducted as illegal from the poll of the sitting member, the sole proof *as to how* they were cast consists of their declarations or admissions proved by third persons; and that of these nine the proof of the disqualification of four of them is of the same kind only. One vote also deducted from the poll of the contestant is proved both as to vote and disqualification solely by the same kind of testimony. In all other cases the proof is either direct or circumstantial, or both, with or without declarations; and that as to declarations most of them were made at or about the time of voting, or the day of the election, or soon after. Deducting now the nine votes established by the declarations of the voters challenged from the proper poll respectively, there still remains for the contestant a majority of 14 votes.

The undersigned submit therefore the following resolutions:

Resolved, That Lewis D. Campbell is not entitled to a seat in the 35th Congress as the representative from the 3d congressional district of Ohio.

Resolved, That Clement L. Vallandigham is entitled to a seat in the 35th Congress as representative from the 3d congressional district of Ohio.

L. Q. C. LAMAR,
HENRY M. PHILLIPS, .
W. W. BOYCE,
J. W. STEVENSON.

For appendix and arguments for contestant see page 32.

Table of the votes deducted from the poll of the returned member and the contestant, respectively, as referred to in the foregoing report, on page 25.

MINORS.

From Mr. Campbell.
W. H. Haughtelin,
John White,
Isaac Walk.

From Mr. Vollandigham.
Israel Landis,
John Ryder,
F. H. Rein,
L. S. Denins.

PERSONS OF UNSOUND MIND.

John Maxwell,
A. M. Bolton,
Cyrus Ayres.

George Bush,
Jacob Fridline,
William Rea.

ALIENS.

James Wright,
David Donaldson,
W. H. Gosline.

Daniel Tehan,
Henry Friday.

NON-RESIDENTS OF WARD.

None.

Peter Funy,
Peter Spirk.

NON-RESIDENTS OF COUNTY.

From Mr. Campbell.

A. K. Tate,
J. F. Palmer,
Joseph West,

Luther Gillieland,
H. H. Haes,
Jonathan Ogden.

From Mr. Vollandigham—None.

NON-RESIDENTS OF STATE.

From Mr. Campbell.

Hudson George,
A. H. Rice,
Amos Higgins,
J. F. Morris,
J. T. Sage,
James Anderston,
J. M. Morrison,
George Sorbray,
Joseph Smith,
B. F. Gumph,
Sam. Hickes,
Woodbridge Odlin,
George Hartman,

Reuben Thomas,
Daniel Davis,
John Low,
Derrick Barcalow,
William Lamb,
James Paine,
Andrew Coble,
James Finlan,
Samuel Neas,
Levi Neas,
Augustus Drayer,
J. H. Foster.

From Mr. Vollandigham.

Daniel Brenner,
W. H. Rowe,

Stephen Wolf,
Hamilton Wolf.

Mr. GILMER, from the Committee of Elections, submitted the following

VIEWS OF THE MINORITY.

The undersigned have no hesitation in saying that the whole case of the contestant fails on three substantive points, either one of which is fatal. The petition, admitting every fact alleged, does not show the petitioner to have been elected; for the only *fact* stated in it is in the sixteenth specification, that the ten persons named therein were allowed to vote for Mr. Campbell, and supposing that allegation sufficient in law, and *true*, it nowhere is alleged what Mr. Campbell's majority or aggregate vote for each was, nor that those votes, if deducted, would change the result. This allegation itself is sufficient only on the very questionable concession, that the words "mulattoes and persons of color" are descriptions of each and all of the persons named.

For the rule of this House, as well as the general principles of law and the words of the statute, require that the "grounds on which" the party relies, shall be *particularly* specified; and where the ground relied on is the admission or exclusion of voters, it can be "particularly specified" only by naming the *voter* and the *legal objection* to his admission or exclusion; and so this House held in Varnum's case, C. E. C. 112 and 113, and in Easton and Scott, C. E. C, 272.

There is further no "*particular specification*" of any fact by which the House can say that the contestant is elected over the sitting member; for if the ten votes be *bad*, yet it is not shown that Mr. Campbell's majority was only ten. No number is *specified*, and there is nothing on the face of the petition from which it can be inferred even. The general statement that the contestant "claims to have received a majority," is no averment that this House can regard; it states no fact but that he *claims* the majority. He might as well have said he claims the seat; a *majority* is a *number* and not a *claim*. It is ascertained only by comparing *numbers*, and if no *numbers* be given, there can be no majority stated.

It is supposed that nobody in the House will pay the least regard to the various specifications, that "*sundry* ballots," "*sundry* persons," "*sundry* qualified electors," &c., were accepted or rejected, or deterred, &c. They are not *specifications* at all. They state no *person* who *is* a voter; they contain no number; they give no notice to the opposite party; they cannot be proved by any evidence; for a witness swearing that "*sundry*" ballots were taken would be instantly stopped; and if he should go on to say A B or C D voted illegally, he would be proving what is not "*particularly specified*." What if one were to file a bill of particulars at law, "To sundries, \$10,000?" There is, therefore, *no* specification which, if admitted, shows the contestant entitled to the seat.

This *alone* at once ends his case; for evidence is by the statute "*confined to the proof or disproof of the facts alleged or denied*," and

if there be no facts specified which, if admitted, show a title to the seat, proving the insufficient facts cannot better the case.

The proof fails as entirely as the allegations, so that were the latter sufficient, the contestant must fail because of failure to prove them.

A title to the *seat* can be maintained only by showing a majority for the contestant. That can only be done by proving the number of votes cast for the two parties and comparing them.

We have shown that the notice specifies no number of votes, nor even any number, as the alleged majority for the sitting member.

The proof is still more defective, if possible; for there is no proof *at all* which professes even to give either the aggregate vote for each party or the majority for the sitting member.

By law all evidence was closed in the case on the 28th day of March, 1857, for the notice of the contestant was given on the 29th day of December, 1856. The reply of Mr. Campbell, on the 27th day of January, 1857; and at the expiration of sixty days from the latter date the statute says *no testimony* shall be taken.

The House might, in their discretion, have allowed further testimony to be taken; but the House *refused* to allow it, and the committee proceeded, by resolution, to consider on the testimony filed regularly taken within the sixty days, except where the parties had otherwise agreed. If this be so, then a simple inspection of the printed document No. 4 is decisive, for it contains the *whole case* as it existed on the 15th of December, 1857, to which the House refused to allow anything to be added; and that evidence shows there is no statement of the aggregate vote for the contestant or the sitting member, or the majority of the latter.

But a piece of paper in the following words and figures was laid before the committee on the 6th day of January, 1858, which we respectfully decline to regard as any part of the evidence before the House, viz:

Abstract of votes given for members of Congress in the third congressional district of the State of Ohio, composed of the counties of Montgomery, Butler, and Preble, on the second Tuesday of October, 1856.

	MONTGOMERY.					BUTLER.		PREBLE.	
	C. L. Vallandigham.	Lewis D. Campbell.	George W. Houck.	E. Jeffords.	Adam Frank.	C. L. Vallandigham.	Lewis D. Campbell.	C. L. Vallandigham.	Lewis D. Campbell.
1st Ward, Dayton.	192	210	---	---	---	---	---	---	---
2d ....do....do....	143	235	1	---	---	---	---	---	---
3d ....do....do....	204	289	---	1	---	---	---	---	---
4th ....do....do....	318	223	---	---	---	---	---	---	---
5th ....do....do....	320	305	---	---	---	---	---	---	---
6th ....do....do....	204	199	---	---	---	---	---	---	---
Madison township.	183	---	---	---	---	---	---	---	---
Jefferson ....do....	243	122	---	---	---	---	---	---	---
Jackson ....do....	250	125	---	---	---	---	---	---	---
Perry ....do....	167	217	---	---	---	---	---	---	---
Clay ....do....	183	236	---	---	---	---	---	---	---
Randolph ....do....	205	166	---	---	---	---	---	---	---
Wayne ....do....	85	158	---	---	---	---	---	---	---
Butler ....do....	151	275	---	---	---	---	---	---	---
German ....do....	314	305	---	---	2	---	---	---	---
Washington ....do....	144	234	---	---	---	---	---	---	---
Miami ....do....	417	378	---	---	---	---	---	---	---
Harrison ....do....	261	222	---	---	---	---	---	---	---
Van Buren ....do....	187	129	---	---	---	---	---	---	---
Mad River ....do....	144	171	---	---	---	---	---	---	---
	4,315	4,323	1	1	2	3,452	2,584	1,552	2,431

SECRETARY OF STATE'S OFFICE,

Columbus, Ohio, December 21, 1857.

I, James H. Baker, secretary of state of the State of Ohio, do hereby certify that the within and foregoing abstract of votes given in the third congressional district of the State of Ohio, composed of the counties of Montgomery, Butler, and Preble, for members of Congress, on the second Tuesday of October, A. D. 1856, is a true copy from the returns made to this office.

Witness my official signature and the great seal of the State of Ohio, at the time and place above written.

[SEAL.]

J. H. BAKER,
Secretary of State.

The certificate was not taken and returned either in the time or manner prescribed by the law of 1851.

The certificate bears date the 21st day of December, 1856. The "sixty days" expired on the 28th day of March, 1857, and the law says "no testimony shall be taken after the expiration of the sixty days." The date, therefore, of the certificate excludes it, for it was

not in existence till after the law said no more testimony should be taken.

But it is said this certificate is a paper of a public nature and so not within the just meaning of the law, but it may be filed at any time.

It is certain that this view is necessary to justify the consideration of the paper, but it is probable that the *necessity* is the only foundation for the suggestion. It is certain the law countenances no such distinction between oral and written testimony, but, on the contrary, expressly provides for the very case.

The law of 1851 professes to provide "a mode of obtaining evidence in cases of contested elections;" it provides for the notice, for the specifying particularly the things to be proved, the officers who shall take the proof, the mode, and penalty for securing the attendance of witnesses, in the 1st, 2d, 3d, 4th, 5th and 6th sections.

The 7th section provides for the actual examination of witnesses, and that *their* testimony shall be *immediately* transmitted by mail to the clerk.

The 8th section gives the magistrate power to require the production of papers, and, on the refusal of any person to *produce* and deliver up *any paper* in his possession pertaining to the election, or to produce and deliver up *certified* or *sworn* copies of the same, if they be official papers, is subjected to the penalty of a recusant witness; and all papers *thus produced*, and all *certified or sworn copies of official papers*, shall be transmitted by said magistrate, *with the testimony of witnesses*, to the clerk.

Then this eighth section as expressly provides the mode of procuring written evidence, papers official or private, pertaining to the election, as the former sections do the taking of the testimony of witnesses alone; and in so doing it prescribes the mode of authenticating and returning the written papers.

If the mode of taking and returning oral testimony is binding, the mode of taking and returning written evidence, declared in the same law, must be equally binding.

If the evidence of a witness taken before an unauthorized person or after the expiration of the time limited cannot be read, a paper taken before the same unauthorized person or after the expiration of the time limited in the same act as to written papers cannot be read; and the eighth section provides both the mode and the time of taking and returning the written paper.

It first gives the magistrate power to compel the *production and delivery up of papers*. This includes *all* papers. The penalty imposed for refusal to produce or deliver up *papers*, or to produce and deliver up certified or sworn copies of the same, if they be official papers, shows that it extends to papers, *official* as well as *private*, and to *copies* as well as to the originals. Not only does it extend to official papers and copies sworn to, but also to copies of the same paper *certified*; and the *scope* of the section thus appearing to include official *papers copied and certified*, the only question open is, what it directs to be done with them.

May a contestant get an official paper, put it in his pocket, bring it

to Congress, and then lay it before the committee or the House without any other formalities for authentication or identification? May he require us to take his word, or use our own eyes to divine the authenticity of the original produced, to know by intuition that it is not a forgery, or that the copy is accurate; or has the law been guilty of the folly of providing no opportunity for the opposite party to inspect the papers, to know what paper is to be used against him, to contest its validity, to show it a forgery or the copy to be inaccurate, or to meet and rebut it by other evidence oral or written? If so, the law is a provision for trickery and surprise—a bribe offered for forgery. These suppositions are all involved in the assumption that this certificate is properly part of the evidence we can now consider. Fortunately the law is quite explicit in defining how and where the papers shall be produced, and how, when, and where they must be sent to us here.

It says: "And all papers thus produced" *and all certified or sworn copies of official papers* shall be transmitted by said magistrate, *with the testimony of witnesses*, to the clerk of the House. Well, this certificate is certainly a paper, and a certified copy of an official paper, and it was not even before any magistrate taking the evidence, nor transmitted to the clerk, *with the testimony of witnesses, at all*. It is, therefore, not here *at all* under the law. This is a *certified* copy, but the law provides for "certified or sworn copies" in the same breath. It therefore contemplates their taking the same course, being produced before the same person, identified by the same magistrate, and returned with the same testimony. But if so, then the certified copy must be produced before the magistrate taking testimony and by *him* transmitted to the clerk, for that is the only course a *sworn* copy *can* take, and the law says that both shall take the same course. It is the only course the *sworn* copy *can* take, because a *sworn* copy implies a witness who swears to the fact of having compared the paper produced with the original, to his knowledge of the original, and to the fact that the paper produced is a *copy*. This is what is meant by a sworn copy, a paper proved by *oral* testimony to be a copy of an original known and sworn to be genuine. It is oral testimony to the copy exactly, as proof of handwriting is oral testimony to the original. But if this be so, then *this* is testimony of a witness to a fact, standing on the same footing with the testimony of the same witness to any other fact, and therefore only *valid* if taken before the authorized magistrate, within the authorized time, after the authorized notice, and transmitted in the authorized mode. This, therefore, is the course and the only allowable course for the production of a *certified* copy, since "certified or sworn" copies are embraced in the same provision.

If this were not so a sworn copy would be merely an *ex-parte* affidavit taken without notice, gotten up after the case was closed and the *pinch felt*—kept secretly in the party's pocket till the day of hearing before the committee, and then *sprung* on the opposite party without any opportunity to test its genuineness, controvert its validity or accuracy, or rebut the presumptions it might create.

Are not all these consequences involved in this very case? Was this certificate ever communicated to Mr. Campbell when he could test

or controvert it? Has he ever had an opportunity of showing that the number of votes it stated him to have received is too little? that the number ascribed to the contestant is too great?—that he is elected by two hundred rather than by twenty votes?—that the judges of election have miscounted in their summing up of the original poll-books, and thus have misled the Secretary of State?—or any opportunity of contesting the truth of the certificate which now forms the ONLY proof of the most indispensable part of his contestant's case?

It is, therefore, clear that unless we repeal the statute this certificate cannot be looked at for any purpose, any more than if it had never been produced.

It is not evidence for another reason, were the former not adequate.

It is not a copy of any official paper which, of itself, when produced, would be evidence; but a mere copy of a certificate which *itself* is merely a *result* ascertained by calculation from the original and the only source of information, *the poll-books*.

The laws of Ohio require each voter to be registered on a poll-book, at the time of his voting, by the judges or commissioners of the election. This poll-book is directed to be returned from each place of voting to the clerk of the county, and from it the clerk is directed to certify to the governor the summary, that is, the number of votes cast for the respective candidates.—(See Swan's Dig. Stat. Ohio, pp. 342, 343, 344, sections 17, 18, 19.)

It is, therefore, plain that the only original record of the votes cast at any precinct or poll are not the clerk's certificate to the governor, but the poll-books kept by the commissioners, and by them sent to the clerk's office to be there safely kept for all persons "who may choose to inspect them."

It is from them the clerk gets all his information. They become the public records of his office, like the deeds certified to him by magistrates, of which *copies* are evidence, but a certificate of the contents or results whereof is not evidence except for any purpose which a special law may have declared it evidence. A certificate of the recordation of a deed from A. B. to C. D. to the tax commissioner, for the purpose of taxation, would be no paper a copy whereof would be admissible to prove the contents of the deed. To prove *that* the party must go, not to the tax commissioner's office, for a copy of the *certificate*, but to the clerk, for a copy of the deed. The *certificate* justifies the assessment of the land to C. D., and the releasing of A. B., but is no evidence in an action against C. D. for the tax of the contents or existence of the deed itself, or that C. D. is owner of the land, and so liable to the tax. So the certificate of the clerk to the governor of the number—the summary of the votes—is an adequate foundation for the merely ministerial act of the governor in giving the certificate of election to the person appearing to have, from the clerk's certificate, the greatest number of votes. For that special ministerial act the clerk's certificate is a just foundation; the law makes it so, but it goes no further. It does not make it *evidence* in a legal contest, when the question is not how many votes are *certified* to the governor, but how many votes were *actually cast at the polls*, that any vote *was really so cast*. The clerk cannot certify that *any vote was cast*, for he

knows nothing about it. He can only certify that it appears by the record that so many votes were cast for A. B. and so many for C. D. But such a certificate is not a *transcript* of a record ; it is a mere certificate of a *result* of *calculation* and estimate of the number which the clerk says he counted on the record which the commissioners sent him. What we need here is proof of how many voted for Mr. Vallandigham and how many for Mr. Campbell ; this we can learn only by proving, by legal evidence, *each vote*, and adding them all up, and this can be done in no way but by the original poll-books or copies of the poll-books. They alone show that any one voted for either. A number is not a vote. Proof of a person's having voted can be given in no other mode than by producing the *record* of his vote, just as an appearance in court can be proved only by the recorded entry of the fact of appearance ; and what is requisite to prove one vote is requisite to prove twenty thousand. The aggregate vote, therefore, can appear only from the poll-books ; the majority can appear only from comparing the aggregate for each candidate. The aggregates, therefore, can be ascertained only by the production of the original, or certified or sworn copies of the poll books ; and the certificate from the secretary's office, being produced, is not either a poll-book or a copy of a poll-book, but merely a copy of a certificate of the summary made out by calculation of the clerks from these poll-books, professing to be *results* and not *contents* of the poll-books, and therefore no evidence of any fact contained in the poll-books.

If the law had required a copy of the poll-books to be certified to the governor, a copy of that copy certified to us by the governor or his secretary would not be evidence, still less can a copy of a certificate of a calculation made from the poll-books. It might be competent to show what the clerks certified to the governor, were the propriety of the governor's having given the certificate to one rather than the other here the question ; but the question being not whether the governor did rightly, but what votes did either candidate receive, the certificate is worthless, for it proves not what votes were given, *but what the clerk said were given*. The certificate is therefore no proof of the essential fact of the number of votes, without which the contestant cannot show himself to have received more than the sitting member.

But suppose all of these grounds are erroneous—grant for sake of argument that the certificate is competent evidence to prove, not merely that there is such a certificate in the Secretary's office, but also *evidence* that the voters enumerated in that certificate actually cast their votes as therein stated, then this admission, of course, goes on the supposition that *the* certificate in the secretary's office is *written official* evidence of the votes cast ; and if so then *this* excludes all the *parol* evidence of the contestant to show how particular persons voted. The certificate supposes the existence of the poll-books. Those poll-books are the original records of those who voted at the election ; and being so, those poll-books are the written public evidence of who voted, and by the universal law no parol evidence can be received to prove the voting of any person. If the contestant wishes to prove that any vote given for Mr. Campbell is illegal, he can only do so by proving, first, the fact that the man voted, and this can be proved only by the poll-book

which is the written legal evidence preserved by law to show that fact; and this excludes *all* secondary evidence, even the oath of the voter himself that he voted for either party.

In a word, the mere fact of insisting that the *certificate* is legal evidence to show the aggregate vote admits the existence of written evidence of the persons who voted; and, if so, then no proof is admissible that any particular person voted, but the poll-book, or a sworn or certified copy thereof, which is the record of the fact that he voted.

Nobody would for an instant allow a witness to swear that there was a certificate in the secretary's office showing that so many votes were cast for either party; but the production of the certificate would be insisted on, and it is equally absurd to allow a witness to come and swear that any one voted without producing the record of his voting.

Taking the case in the foregoing unanswerable points of view, we conceive the whole case ends in favor of the sitting member. But suppose that there might be, in the views of some, doubt about this, and if we give to the loose and uncertain testimony filed all the weight and consideration to which it can in any possible way be legally entitled, we find the result of the election to be as follows:

Third congressional district, Ohio.

Official vote of Lewis D. Campbell.....	9,338
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The undersigned upon full examination of the evidence presented, regard the following votes cast for Mr. Campbell as illegal, to wit: Hudson George, A. H. Rice, J. F. Morris, J. T. Sage, J. M. Morrison, Samuel J. Heikes, George Sowbray, W. H. Houghtelin, John White, Joseph Wright, A. M. Bolton, Derrick Barkalow, James Paine, David Donaldson, and Cyrus Ayres, making, in all, the number of.....

15

and which, if deducted from the official vote, leaves	9,323
-------------------------------------------------------------	-------

The undersigned regard the vote rejected because Campbell's name "for Congress" was written twice (pages 155 and 158) as a legal vote; and also the two votes rejected in Harrison township, Montgomery county, the evidence not proving them to have been "double," (pages 148, 150, 152.) Add these votes to the above stated.....

3

and we find the total vote for Lewis D. Campbell to be.....	9,326
-------------------------------------------------------------	-------

Official vote of C. L. Vallandigham.....	9,319
Of that number the undersigned view as illegal votes the following, to wit: Daniel Tehan, Peter Furey, Daniel Brenner, Henry Frilay, Israel Landis, John Beck, John Ryder, Franklin H. King, John W. Shroyer, Wm. H. Rowe, L. S. Denius, George B. Richmond, Jacob Friedline, Stephen Wolf, and William Rea, making fifteen.....	15

tes, and which, deducted from the official vote, leaves....	9,304
-------------------------------------------------------------	-------

For the same reason as given before in Campbell's vote, we add two votes rejected in Lemon township, Butler county, (page 129) the evidence not showing them to have been double.....

2

These added, makes the total vote of Vallandigham..... 9,306

Campbell's total vote..... 9,326

Vallandigham's total vote 9,306

Majority for Campbell..... 20

But the undersigned have doubts as to the legality of the following votes cast for Mr. Campbell, to wit: Amos Higgins, R. Thomas, B. F. Gump, and Samuel Neas. The evidence upon both sides is conflicting and uncertain. We are, therefore, disposed to give to Vallandigham the advantage of these four votes, which still leaves a clear majority upon a final count, for Lewis D. Campbell, of sixteen votes.

We submit that an impartial review of the whole testimony cannot fairly present any result more favorable to the contestant.

Inasmuch as a summary of the authorities sustaining the legal positions herein presented, as also other useful and convenient references are pointed out by the counsel for the sitting member in their arguments, we annex the same hereto, marked A and B, as a part of this report. We therefore offer the following resolution:

Resolved, That the Hon. Lewis D. Campbell is entitled to retain his seat as member from the third congressional district in the State of Ohio to this Congress.

ISRAEL WASHBURN, Jr.
EZRA CLARK, Jr.
JAMES WILSON.
JOHN A. GILMER.

MAY 13, 1858.

For arguments of sitting member's counsel, made part of this report, see p. 76.

Mr. HARRIS, from the Committee of Elections, submitted the following

VIEWS OF A MINORITY OF SAID COMMITTEE.

The undersigned, being unable to agree with either of the equal divisions of the Committee of Elections in their views of the case of C. L. Vallandigham, who contests the seat of Lewis D. Campbell, from the third congressional district of the State of Ohio, proposes very briefly to state the result of his investigations in the case.

The district is composed of the three counties of Montgomery, Butler, and Preble, and the vote cast on the 14th day of October, 1856, was as follows:

Counties.	Vallandigham.	Campbell.
Montgomery.....	4,315	4,323
Butler.....	3,452	2,584
Preble	1,552	2,431
	<hr/> 9,319	<hr/> 9,338
Campbell's majority as returned.....		<hr/> 19

Upon this return, Mr. Campbell received his certificate of election, which Mr. Vallandigham contests. The Committee of Elections bestowed upon the case a large amount of attention. Both the contestant and sitting member were assisted by eminent counsel, and the merits of the respective sides were presented with most signal ability by Hon. George McCook for the contestant, and Hon. Robert C. Schenk for the contestee. Various exceptions to testimony were taken, and many nice and technical points were raised and discussed with remarkable zeal and acumen. But in the view taken by the undersigned of the case, while intending to hold as strictly as possible to well established usage and the rules of evidence, he has rejected all technicalities, and endeavored to look at the case with a view only to the convictions which the testimony, examined by such rules, might impart.

The following extracts from the constitution and laws of Ohio seem to be those which bear directly upon the case, and are given as furnished by the contestant.

Laws of Ohio pertinent to the case.

The following are extracts from the constitution and statutes of Ohio, relating to elections and the elective franchise:

In all elections, *all white male inhabitants* above the age of twenty-one, &c., shall enjoy the right of an elector.—*Constitution of 1802.*

Every white male *citizen of the United States*, of the age of twenty-one years, who shall have been a resident of the State one year preceding the election, and of the county, township, or ward in which he

resides such time as may be provided by law, shall have the qualifications of an elector, and shall be entitled to vote at all elections.

No idiot or insane person shall be entitled to the privileges of an elector.—*Constitution of 1851.*

NOTE.—Under the constitution of 1802, the supreme court of the State, in 1842, decided that persons NEARER WHITE THAN BLACK were qualified electors, as being “white male inhabitants.”—(*Jefferys vs. Ankenny*, 11 O. Rep. 372; and *Thacker vs. Hawk*, Iden, 376.)

In both these cases Judge Read dissented, and the contestant will maintain that they were of doubtful authority at any time, and are now wholly superseded by the constitution of 1851. That constitution requiring all electors to be as well “CITIZENS OF THE UNITED STATES” as white males, the contestant claims that no person of African descent having any distinct and visible admixture of negro blood, can be a qualified elector in Ohio, since no such person can be a citizen of the United States.—(2 Kent’s Com. 72, 258; 19 Howard Rep. 393, *Dred Scott* case.)

SEC. VII. That if either of the trustees, common councilmen or clerk of any township shall fail to attend at the time and place of holding elections, or if either of them should be a candidate then it shall be the duty of the electors present to choose, *viva voce*, suitable persons (as the case may require) having the qualifications of electors, to act as judges or clerk (as the case may be) of the election.

SEC. XV. That if a ballot shall be found to contain a greater number of names for any office than the number of persons required to fill that office, it shall be considered fraudulent as to the whole of the names designated to fill such office, but no further.—*General election act of May 3, 1853.*—(*Swan’s Statutes*, 341, 342.)

SEC. II. The judges of the election, in determining the residence of a person offering to vote, shall be governed by the following rules so far as they may be applicable.

1st. That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom and to which, whenever he is absent, he has the intention of returning.

2d. A person shall not be considered or held to have lost his residence who shall leave his home and go into another State for temporary purposes merely with an intention of returning.

3d. A person shall not be considered or held to have gained a residence in any county of this State into which he shall come for temporary purposes merely, without the intention of making such county his home, but with the intention of leaving the same when he shall have gotten through with the business that brought him into it.

4th. If a person remove to another State with an intention to make it his permanent residence, he shall be considered and held to have lost his residence in this State.

5th. If a person remove to another State with an intention of remaining there for an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this State, notwithstanding he may entertain an intention to return at some future period.

6th. The place where a married man's family resides shall generally be considered and held to be his residence; but, if it is a place of temporary establishment for his family, or for transient objects, it shall be otherwise.

7th. If a married man has his family fixed in one place, and he does his business in another, the former shall be considered and held to be his place of residence.

8th. The mere intention to acquire a new residence without the fact of removal shall avail nothing; neither shall the fact of removal without the intention.

9th. If a person shall go into another State, and while there exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this State.

NOTE.—Prior to the session of the legislature in 1857 no fixed period of residence in a county, ward, or township, was required as a qualification for electors. Any person moving into a county on the day of election even, and declaring that he had come in for the purpose of making the county his home, was allowed to vote. Such cases were of frequent occurrence. Residents of other counties and districts, usually unmarried men, "light to run away," were many times brought in to work at some trade or business until after the election; and under a facile conscience and a loose administration of the law were procured and permitted to vote. Thus "pipe-laying"—colonizing—was an easy and not an uncommon thing; and to prove the offence next to impossible. This sad defect in the election laws of the State was remedied at the last session of the legislature, and a thirty days' residence in the county is now required.

In the examination of the evidence it seems to be proved by clear, direct, and positive testimony, that from the votes cast for contestant there should be deducted that of Daniel Tehan, (pp. 147–151,) Peter Furey, (p. 147,) Daniel Brenner, (p. 150,) Henry Friday, (p. 152,) Israel Landis, (p. 156,) John Ryder, (p. 159,) F. H. King, (p. 160,) Wm. H. Rowe, (pp. 161–2,) L. S. Denins, (p. 163,) Geo. B. Richmond, (pp. 163–4–5–6,) Jacob Freidline, (p. 166 et seq.), Stephen Wolf, (p. 168,) William Rea, (p. 169–70,)—thirteen votes; thus making Campbell's majority 32. To this should be added two votes erroneously rejected in Harrison township, Montgomery county, (pp. 148–9, 152–3;) also one vote in Washington township, Montgomery county, (pp. 155–6, 157–8;) thus making the majority of the sitting member (leaving the votes cast for him unquestioned) 35 votes.

On the other hand it seems to be proved by clear, direct, and positive testimony, that from the votes cast for the sitting member there should be deducted that of Hudson George, (pp. 11, 12,) A. H. Rice, (p. 12,) J. T. Sage, (p. 36,) Samuel Heikes, (p. 48,) Geo. Sorbray, (p. 55,) W. H. Houghtelin, (p. 64,) John White, (p. 71,) James Wright, (p. 73,) James Payne, (pp. 110, 123,) D. Donaldson, (p. 111,) Cyrus Ayres, (pp. 114, 115, 122)—eleven votes. To this number I add two votes improperly rejected in Lemon township, Butler county, (p. 129,) also one vote improperly rejected in Dayton, (p. 75,) making in all thirteen votes, clearly proved by direct and positive testimony;

thus reducing the majority of Campbell from thirty-five (35) to twenty-two (22.)

In addition to these votes the sitting member concedes there should be deducted from his poll the votes of J. F. Morris, (p. 34,) and J. M. Morrison, (p. 38,) A. M. Bolton, (p. 82,) and Derrick Barkalow, (p. 108,) reducing the majority of the sitting member to seventeen.

The contestant claims that there should be rejected from the vote of the sitting member twenty-three votes, to wit :

1. *Maxwell*, (p. 39 et seq.,) on the ground of idiocy or insanity. He is neither proved insane nor idiotic. He is proved to be a person of very limited intellect, but he had voted for two or three years preceding without question. The constitution of Ohio provides that "no idiot or insane person shall be entitled to the privileges of an elector." The proof should clearly show one or the other of these conditions before a vote should be rejected. It is useless to prove "limited intellect," or "partial idiocy." Were he shown to be an "idiot" his vote should be rejected, but he is not. Besides all this, there is no proof for whom he voted.

2. *Walk*, (pp. 117, 122.) Davidson testifies that Walk voted in Lemon township; and Conly testified that Walk told him on the night of the election that he had voted for Campbell; that he presumes he was not of age at the time; and had heard his father say before the election that Walk would not be old enough to vote.

3. *Norris* (pp. 106-7) swears that he voted for Campbell; was not a native born citizen of the United States, but was "naturalized in Cincinnati, in 1844. That he was one year old when he came to the country and twenty-two when naturalized.

4. *Gosline* swears he voted for Campbell; that he was born in Canada, and had been a resident of the United States for eighteen years; that his father was born in the State of New York, and resided in Canada eight years, and then returned to and has since resided in the United States.

5. *Smith*, (pp. 13-14) Ensey swears he believes Smith voted, but is not certain; does not know for whom he voted. Was a republican in politics. Told witness he was "past nineteen." Henry swears he saw him vote. Don't know his politics; heard him say he voted the republican ticket; don't know his age nor when he came to the State. He voted the republican ticket. Does not know that he voted for Campbell.

6. *Tate*, (pp. 39, 42, 44, 46.) McGrew swears he saw Tate vote. Tate's vote was challenged. Can't tell who he voted for. Has always considered him a republican. Campbell was on the republican ticket for Congress. Tate told Matcher that he came into the township to vote; his vote was challenged by democrats. Dr. James swears to a conversation with Tate about his leaving the county, (pp. 43-44.) McEwen swears as to same matter, (pp. 45-46.)

7. *Anderton* (p. 37) swears he voted for Campbell. Left Ohio in November, 1854. Went to Indiana; remained there eleven months. Family returned to Ohio October 1, 1855. Went to Indiana to go into business, and did so; returned to Ohio in September, 1855, to make arrangements to stay, and *did* so. Went back to settle up busi-

ness and returned about November 1, 1855. Voted in Indiana at spring election, 1855, and October 10, 1855. From September, 1855, has regarded Dayton, Ohio, as home.

8. *Odlin*, (pp. 33-54.) Holliday (p. 34) swears that in September, 1856, Odlin told him he had been in Minnesota; that he had taken up his residence there and was going back. Larue (p. 54) swears he saw Odlin vote a republican ticket, and that Odlin told him he was a republican, and said he was going to vote for Campbell for Congress. Left Ohio in summer of 1855; went to Wisconsin; came back in summer of 1856. Said he had been locating lands in Wisconsin and had a nice farm there, and was going to live on it. Took his family with him when he left Ohio. Is now in Kansas. Previous to October election, 1856, said he resided at Madison, Wisconsin.

9. *Hartman*, (p. 59.) Furnas swears he was at the polls of Butler township, Montgomery county. Saw no one vote whom he thought not entitled to vote. Heard Hartman say in the evening of election day that he had voted a full republican ticket. That he was working by the month in Butler county, and had been two or three months or longer. Said he had not been in the State a year; that he came from Maryland. Campbell was the republican candidate for Congress. Hartman's name is on the poll book, No. 259. Suppose him not to be a married man. Knows nothing but what Hartman said, which was that he had voted the full republican ticket.

10. *Davis*, (p. 73.) Tilton swears that he supposes Davis voted in the 5th ward of Dayton. The name of Daniel Davis is on the poll-book of said ward, (No. 320.) Davis is a warm and earnest republican. Heard Davis say he never voted for but two democrats in his life. On July 16 Davis took his wife and children and went on a visit to Illinois. Went for the benefit of their health, and intended, if better suited, to locate. This was family understanding and talk. Rented land in Illinois; put in wheat. Left his family; returned; sold off part of his things; packed up rest and went off. Thinks he has been in Illinois ever since. Davis asserted he had not lost his vote by moving to Illinois.

11. *Low*, (p. 81.) Trader swears "*they* told me that as soon as *they* had delivered him the copy, &c., he left. He told one of the men that he would 'help Vallandigham out like hell.' " Thresher swears (p. 81) as to testimony of Lowe in another contested election case.

12. *Sharp* (pp. 66, 67, 68, 69,) swears he lives in Mad River township, Montgomery county, Ohio, and voted for Mr. Campbell; left Ohio in spring of 1855, for Indiana; came back October 15, 1855; remained until May 10, 1856, went again to Indiana; came back in July 1856, and has been in Montgomery county ever since; never went to Indiana to stay.

13. *Finlan*, (pp. 103, 104, 105.) Troutman swears Finlan told him that he had voted for Campbell, and had not been in the State a year before the election; said he had voted in Fairfield township, and it was his opinion he was a legal voter; that he went to Indiana to reside if it pleased him, but it did not and he returned in summer of 1856; Milliken swears that the name of Finlan is on the poll-book.

14. *W. Lamb*, (pp. 108, 109.) Giffin swears that the poll-books of

the 3d ward in Hamilton show that W. Lamb made affirmation. Van Derrier swears he had several conversations with Lamb; in one, he said he had voted in Kansas in the spring or summer of 1856; said he would vote the republican ticket; and after the election, admitted that he had voted for Mr. Campbell; he went to Kansas in November, 1855; located there, built a cabin, and left his family in Ohio during the summer, in Preble county, where she lived when he voted in Hamilton. On cross-examination, says "his family did reside here (Hamilton) then, (when he left Ohio in 1855,) and do now, though Lamb himself is now absent in Missouri."

15. *Coble*, (pp. 112, 117.) McFlynn saw a man by the name of Coble get a ballot, go to the polls and vote; Coble said he had come from Pennsylvania the last March, was raised there and came here first in March, 1856; said he made his home in Warren county; witness accused him of voting illegally; he first replied that he did not vote, but said afterwards no one had challenged him; believes he voted for Campbell; saw him get a ballot of a man who was electioneering for Campbell; Davidson swears Coble's name is on the poll-books.

16. *Levi Neas*, (pp. 112, 113.) S. M. Neas swears his son Levi voted, and supposes he voted for Campbell; that his son voted in California in 1853; that they both went to California in November, 1852, and returned in May 1856; that they went intending to return to Ohio before the Presidential election, and did return and vote.

17. *A. Drayer* (p. 118.) W. E. Drayer testifies; knows A. Drayer, who told witness he voted in the 2d ward of Hamilton, for Campbell; a month before the election he went to Indiana, and took his utensils to start a bakery; on the day of election he came back, voted, and afterwards again returned to Indiana; he took his property with him; when in Ohio, said he would return to Indiana.

18. *Foster*, (pp. 127, 128.) Black testifies, was judge of election; Foster voted; he was sworn, and said he had been in the county several days, and considered it his home; that he had his washing done there, and considered it his residence; general report said he left the county soon after the election. It was supposed he came to marry, that he did so, and left soon after; had heard that he came from Kentucky, and had gone back. Hileman swears that Foster voted for Campbell; that after voting, Foster said he came to vote, and had voted; that he came the Saturday night previous for the purpose of making it his residence; a week or ten days after election witness heard he had married and gone to Kentucky.

19. *Fisher*, (pp. 67, 68.) Deane swears Fisher came from Lebanon, Warren county, five or six days before the election, and removed to Miami county about the middle of March, 1857; he owned no property in Montgomery county; did not keep house, rent, or occupy a farm, nor was engaged in any business; came with his son who lived in Montgomery county; don't know for whom he voted, but heard him say he would vote for Campbell, and expressed himself against Valandigham; his son was a Campbell man; don't know whether he came to vote or live with his son; he did live with his son until two weeks ago.

20. *Palmer*, (p. 77.) Kelly swears Palmer voted at 1st ward Day-

ton ; he was at Swaynie's hotel ; did not keep house ; think he had not been more than two weeks here prior to election ; was engaged in no visible business ; understand he is now in Chicago ; went west between the State and presidential elections, but returned ; came to polls with Swaynie, who is a friend of Campbell ; Palmer was a republican, and politically a friend of Campbell ; Palmer was a man of family and had his family with him ; he said under oath he regarded Dayton as his then place of residence ; Deckert swears that Palmer expressed gratification at the news of Campbell's election.

21. *Gilliland*, (pp. 110, 123,) Sterritt swears that Gilliland voted in Ross township, Butler county, for Campbell ; and that he swore that he was a voter of the county and State ; that he left the county immediately after the election. Morris swears he was judge of election ; that Gilliland voted ; that he came a day or two before the election, and staid a day or two after ; understood he had been making Warren county his home, and went back after the election ; not known to have since returned. Was sworn at election, and said he had no other residence, and had always considered that his home.

22. *Hall*, (pp. 111, 119,) Giffen swears that the poll books of the third ward, in Hamilton, show that H. H. Hall voted there. Gillmore swears Hall told him he voted for Campbell, and that he had come from Toledo, got off the boat, went to the polls, and voted, and went away within two months after the election ; said he got off the boat and came here to vote.

23. *Ogden*, (pp. 124, 130.) McGehan swears that at the time of election he made his home in Springdale, Hamilton county, and told witness he voted in the city of Hamilton, and for Campbell. He was a single man. Lilly swears Ogden's name is on the poll books of the third ward, in Hamilton.

The contestant also claims that some fifteen mulattoes and persons of color, to wit : A. J. Anderson, J. M. Mitchell, Reuben Redmond, James E. Robbins, (pp. 105, 121,) J. O. Robbins, A. Proctor, Thomas Tester, E. S. Jones, Evan Hoffman, Arthur Hoffman, C. H. Cowan, Robert Goings, W. Griffith, W. Lawrence, W. Huffman, and Alfred Huffman, voted for Campbell, and that their votes were illegal, and should be excluded, (pp. 125, 126, 127.)

It appears that the names of the first four are found on the poll-books of the second ward of Hamilton, and the last twelve named are found on the poll-books of Oxford township, Butler county.

Anderson swears that, from the statement of his mother, he *presumes* she had one-fourth part African blood in her veins ; that his mother's father was white, and her mother *Indian* or *African*, and that the father of witness was a white man, and that witness voted for Campbell. He also swears that there is a visible admixture of African blood in Redmond, and he believes Redmond voted for Campbell. He also swears he believes Mitchell voted for Campbell, and that there is no visible admixture of African blood in him, (p. 121.) Milliken swears (p. 105) that there was a visible admixture of African blood in them all.

Mollyneaux (p. 125) swears the last twelve are mulattoes and persons of color. He says the democrats opposed, and the republicans

avored, their voting ; did not see any of the votes challenged. Ringwood swears that the friends of Campbell took the usual part that men do to get up their friends to vote. He says: "So far as my knowledge extends, (and I saw three or four go up to the polls,) they were attended to the polls by the friends of L. D. Campbell. One of them (Lawrence) admitted, in conversation with me, that he had voted for Campbell for Congress, and advocated his election." He thinks these mulattoes are persons with a visible admixture of negro blood.

It seems clearly proved that Anderson voted for Campbell, and one witness swears that Lawrence admitted that he had voted for Campbell. These are the only mulattoes that are in any manner proved to have voted for him. Anderson swears that he *believes* Redmond and Mitchell voted for him, but does not give the ground of his belief. Molyneaux saw three or four go to the polls attended by friends of Campbell. As to the rest of these "mulattoes or persons of color," the candidate for whom they voted is left to the merest conjecture.

Of the twenty-three votes above referred to claimed by contestant as being illegal, and having been cast for Campbell, the testimony seems quite strong and conclusive that Walk, Tate, Anderton, Odlin, Hartman, W. Lamb, Drayer, and Ogden, (eight votes,) did vote for Campbell, and that they were not legal votes.

The proof is neither clear nor regular, but it strongly tends to prove that Norris, Smith, Davis, Foulan, Gilliland, and Hall, were not legal voters, and that while in regard to Maxwell, Gosline, Lowe, Sharpe, Coble, Levi, Neas, Foster, Fisher, and Palmer, it is too slight to justify a rejection of their votes, or too doubtful as for whom they were cast to warrant upon it the unseating of a member, and the bestowal of his place upon another.

While, from a view of the whole case, it is impossible to satisfy the mind that the contestant has by strictly legal proofs shown himself entitled to the seat, yet he has certainly brought the right of the sitting member to the severest question. It has been held that where "a person holds a certificate of election he ought to keep his seat till it is shown that he is not entitled to it." But what shall be sufficient to show this? The mere fact that the returning officers or false votes have given to one the certificate ought not justly to endow him with superior rights or privileges than he who questions such returns or votes. Would it not be more just that the parties stand on equal rights, and in the same position, as though both had presented themselves at the same time, and under the same circumstances, and claimed the seat? Then if we are unable to decide between their rights we refer them back to their constituents. To give the sitting member superior advantages is offering a premium for false returns and fraudulent votes. I prefer to consider them as standing on equal ground.

In deciding questions of contested election it is often difficult to reach a conclusion that shall be unobjectionable and command general assent. This is more difficult where elections are by secret ballot than where they are viva voce, for in the latter case the poll-books show unerringly not only who voted, but for whom the votes were cast. When the voting is by ballot, after a given vote is proved to be illegal,

the great difficulty still is to show for whom it was cast; so great is this difficulty that it is proposed to resort to statements of the character of hearsay, (because not given under oath and uttered by third persons,) to show for whom votes were cast. This is dangerous evidence, but from the necessity of the case it is insisted that it should be received. If it should be done, it should be with the greatest caution.

The legality of each vote forms a question by itself, and where seventy or eighty of these votes are in question, it is next to impossible to agree upon the legality of each, and yet the ruling upon one of them is to determine the case. The legality of each vote must be settled; each perhaps involves questions of law and fact mixed up in inextricable confusion, and to be settled by reference to rules of law and evidence, and by circumstantial or hearsay testimony, often given by heated and interested partizans. The whole testimony is not to be weighed as in a case at law, but each vote must be scrutinized and determined with mathematical certainty. As it is next to impossible to reach such conclusions, party zeal generally comes in to aid the hesitating judgment, and the Journals of this House will show that the views of members, as to the legality or direction of votes, and every thing connected with elections, have too often been determined by the party medium through which they have been viewed.

It is quite easy to seize upon vote after vote, and with dogmatic confidence accept or reject them as our impulses may incline, but it is a severe task to go through with an extended investigation and arrive at conclusions entirely satisfactory to the mind that justice has been done. A large number of votes may be in dispute, and upon the admissibility of each the best legal minds and most impartial judgment may differ. We may adopt principles of construction and rules of evidence, (without which we cannot proceed in our investigations a step,) but even then we may be balked with the constantly recurring inquiry, whether the matters presented come within our rules and are admissible or otherwise. And when we have concluded our examination, according to the principles and rules we have adopted, and are brought to a result, even then our minds are often impressed with a conviction that a true and just conclusion would be the reverse of that to which, by our own rules, we have been forced.

In reviewing the important questions connected with this case, I have discarded all technicalities, and endeavored to reach, through testimony admissible under well settled rules of evidence, a satisfactory decision; yet, I have been unable to find sufficient to warrant me in pronouncing the contestant entitled to the seat of the contestee; at the same time there are such facts and circumstances, some of them mixed up, it is true, with opinions and hearsay testimony, as to amount almost to a conviction that he is so.

The question then presents itself, will the House, in this state of doubt and uncertainty, arbitrarily decide in favor of one or the other of these parties, when it is as liable to decide wrong as right? or will it refer the case back to the people for their decision? When the verdict is questioned, poll the jury. This has very often been done in cases less doubtful than this. And fortunately it can be done here

without serious public inconvenience. The present session of Congress is near its close. But a few days of service remain prior to the next regular election in Ohio, when this contest can be settled by the people without extra trouble or expense, and settled in accordance with their own wishes. Believing that such mode of decision is, under the circumstances, the only proper one, the undersigned thinks that the seat should be declared vacant, and the governor of Ohio notified thereof.

THOS. L. HARRIS.

APPENDIX.

No. I.

Notice of contest.

DAYTON, OHIO, *December 24, 1856.*

SIR: You will take notice that I will contest your right to a seat in the House of Representatives as the member from the third congressional district of Ohio in the thirty-fifth Congress, the grounds of contest being as follows:

1. That, at the election held on the 14th day of October, 1856, in counting out, sundry ballots were rejected by the judges of election which should have been counted for me.

2. That, in counting out, sundry ballots were counted by the judges of election for you which should have been rejected.

3. That sundry persons were permitted to vote for you in townships and wards of which they were not legal residents.

4. That sundry qualified electors who offered to vote for me, and who were legal residents of the ward or township in which they offered to vote, were wrongfully refused their votes, on the ground of non-residence in the ward or township.

5. That sundry persons, not legal residents or electors of Montgomery county, were permitted to vote for you in said county, while sundry others, legal residents and electors thereof, who offered to vote for me, were illegally rejected.

6. That sundry persons, not legal residents or electors of Preble county, were permitted to vote for you in said county, while sundry others, legal residents and electors thereof, who offered to vote for me, were illegally rejected.

7. That sundry persons, not legal residents or electors of Butler county, were permitted to vote for you in said county, while sundry others, legal residents and electors thereof, who offered to vote for me, were illegally rejected.

8. That sundry electors were permitted to vote for you more than once at said election.

9. That sundry qualified electors were, by threats, procured to vote for you, who, but for said threats, would have voted for me; and sundry others, qualified electors, were, by threats, deterred from voting for me, who, but for such threats, would have so voted.

10. That sundry qualified electors, some not able to read at all, and sundry others not able to read the English language, were fraudulently furnished with ballots which they were led to believe, and did believe, contained my name, while, in fact, said ballots contained yours, or were blank; by reason whereof said electors were prevented from voting for me, as they intended.

11. That, in the second ward of the city of Dayton, John B. Chapman, one of the councilmen of said city for said ward, declined to serve as a judge of said election, and, of his own authority, and without any choice, *viva voce* or otherwise, by the electors present, appointed Stith

M. Sullivan to act as judge of election in his place, objection to his (said Chapman's) right to appoint being at the time made by electors present.

12. That sundry persons, not of the age of twenty-one years, were permitted to vote for you.

13. That sundry persons, not residents of the State one year next preceding the election, were permitted to vote for you.

14. That sundry persons, idiot and insane, were permitted to vote for you.

15. That sundry persons, not "white male citizens of the United States," were permitted to vote for you.

16. That Alfred J. Anderson, John M. Mitchell, James Robbins, Reuben Redman, Thomas Tester, John D. Robbins, Alexander Proctor, Cyrus H. Cowen, Robert Goings, W. Griffith, and twenty-two others, mulattoes and persons of color, not qualified electors of Ohio under the constitution and laws thereof, were permitted to vote for you.

17. That sundry persons, not having all the legal and constitutional qualifications of electors, were permitted to vote for you.

18. That sundry persons, having all the legal and constitutional qualifications of electors within this State, and who offered to vote for me, were rejected.

19. That other irregularities, defects, and illegalities were permitted or occurred in conducting said election, whereby my rights as a candidate were prejudiced.

You will further take notice that I claim to have received a majority of all votes legally cast at said election, and that I am therefore legally entitled to represent the qualified electors of the third congressional district of Ohio in the thirty-fifth Congress.

C. L. VALLANDIGHAM.

Hon. LEWIS D. CAMPBELL.

Before the undersigned authority personally came Stephen Crane, this 29th day of December, 1856, and made his solemn oath that he this day served the foregoing notice upon the Hon. Lewis D. Campbell by delivering to him personally a true copy thereof.

STEPHEN CRANE.

Sworn to and subscribed before me, this 29th day of December, 1856.

JOHN S. HOLLINGSHEAD,

Notary Public.

B.

Answer of Mr. Campbell.

WASHINGTON, January 19, 1857.

SIR: Your communication, dated December 24, 1856, purporting to be a notice that you will contest my right to a seat in the House of Representatives as the member from the third congressional district in the thirty-fifth Congress, and specifying "19" grounds, was handed to me in this city some days after its date by Mr. Crane, (who informed me that he did so at the instance of Hon. George E. Fugh.)

For answer, I deny the several allegations therein stated, and give you two reasons why I shall insist upon my right to said seat.

1. I hold a certificate in the following words, viz :

UNITED STATES OF AMERICA.

THE STATE OF OHIO, *Executive Office* :

I, Salmon P. Chase, governor and commander-in-chief of the State of Ohio, do hereby certify that, at the annual election held on the second Tuesday of October last, Lewis D. Campbell was duly elected a representative in the thirty-fifth Congress of the United States from the third congressional district in the State aforesaid.

In testimony whereof, I have hereunto subscribed my name, and caused the great seal of the State of Ohio to be hereunto
[L. S.] affixed, at the city of Columbus, this sixth day of December,
A. D. 1856.

S. P. CHASE.

J. H. BAKER, *Secretary of State*.

2. At said election a majority of the qualified electors of said district voted for me and against you. I give you "23" specifications of the proof which it is my purpose to make during the proposed contest, viz :

1. That divers persons who were not qualified electors voted for you.
2. That divers persons who were qualified electors were prevented from voting by the decisions of the judges of the election who would have voted for me.

3. That ballots were counted for you which should have been counted for me.

4. That ballots which were given for me, and received by the judges of the election, were not counted.

5. That, in some of the townships and wards, more votes were counted for you than there were ballots with your name upon them.

6. That, in some of the townships and wards, a less number of votes were counted for me than there were ballots lawfully given with my name upon them.

7. That persons half negro, or more, voted for you.

8. That persons not half white, and part negro, voted for you.

9. That persons half white, and more, entitled, under the laws and decisions of the courts of Ohio, to the right of suffrage, who would have voted for me, were refused the exercise of that right by the judges of the election.

10. That unnaturalized foreigners voted for you.

11. That foreigners voted for you on the presentation of naturalization papers which had been fraudulently obtained, and who, therefore, had not acquired the right to vote.

12. That foreigners voted for you on the presentation of naturalization papers which had been issued by persons having no lawful authority to issue the same, and through which, therefore, they acquired no right to vote.

13. That persons of foreign birth who had never taken the oath of allegiance to the government of the United States voted for you.

14. That persons who could not read the ballots, and who intended

to vote for me, were, through fraud and misrepresentation, made to vote for you.

15. That persons having voted for you in one of the townships or wards, afterwards, on the same day, voted for you in one or more of the townships or wards.

16. That qualified voters, who were infirm from age or sickness, went to the polls to vote for me, and were prevented from delivering their ballots to the judges by disorderly bystanders.

17. That, in some of the townships and wards, persons acted as judges and clerks of the election who had not been chosen and qualified according to law.

18. That, in some of the townships and wards, the judges certified that a greater number of votes had been given for you than they had received ballots with your name upon them, and that a less number had been given for me than they had received ballots with my name upon them.

19. That, in the returns made to the county clerks, the certificates showed that you had a greater number of votes than you had actually received, and that I had a less number than I had actually received.

20. That, in some of the townships and wards, the polls were opened before, and continued open after, the hours prescribed by law.

21. That persons, after voting for you in one township or ward on the same day, voted for you in the same or in other townships or wards.

22. That large sum of money, raised for that or a like purpose in the cities of Washington, D. C., and Baltimore, Maryland, and elsewhere, were expended in procuring for you the votes of persons who were non-residents of the district, and others not qualified voters.

23. That *I am the representative elect of the qualified voters of the third congressional district of Ohio in the thirty-fifth Congress of the United States, and that you have no right to deprive me of my seat.*

LEWIS D. CAMPBELL.

[Endorsement.]

"DAYTON, OHIO, January 27, 1857.

Received this answer by the hands of Thomas C. Mitchell, esq.

"CLEMENT L. VALLANDIGHAM."

No. II.

POLL-BOOKS.

Laws of New Jersey.

SEC. 9. Every voter shall openly and in full view deliver his or her ballot (which shall be a single written ticket containing the names of the person or persons for whom he or she votes) to the said judge, or either of the inspectors, who, on receipt thereof, shall, with an audible voice, pronounce the name of such voter, and, if no objection is made to the voter, put the ballot immediately into the election box, and the clerk of the election shall thereupon take down the name of such voter in a book, or poll-list, to be provided for the purpose; and if an adjournment of the poll shall take place during the election, the aperture in the top of the box shall be secured by the bolt aforesaid, and the

names on the *poll-list* shall be counted, and the number put down in writing, and the *said list* locked in the box, and the keys kept separate by two of the persons hereby appointed to conduct the election.

SEC. 10. At the close of the poll, the aperture in the lid of the box shall be covered in the manner aforesaid, and the *poll-list* shall be signed by the said judge and inspectors, or any two of them, and also by the said clerk, and the names contained therein shall be numbered, and the number put down in writing; after which, the box shall be opened and the ballots therein contained taken out, one at a time, by any one of the persons hereby appointed to conduct the election, who shall call out distinctly, while the ballot remains in his hands, the names contained therein, and for what offices, and then deliver the same to one of the other persons associated with him by this law, who shall distinctly read off and file the same, and the clerk shall enter in distinct columns all the names contained in each ballot and for what offices, and so on in like manner with the rest of the ballots contained in the box *to the amount of the number of names contained in the poll-list*; and if it shall so happen that there are a greater number of ballots than there are names on the *poll-list*, then no more ballots shall be examined and enumerated than will amount to the number of names on the *poll-list*; and if two or more ballots shall be found folded or rolled up together, or if a ballot shall contain more names than it ought to contain, or otherwise appear to be fraudulent, such ballot or ballots shall not be estimated, but shall be rejected as utterly void, and as many numbers shall be deducted from the amount of the *poll-list* as shall be equal to the number of ballots so rejected; and after the examination of the ballots shall be completed, the number of votes for each candidate shall be carefully cast up by the said clerk, under the inspection of the persons hereby empowered to conduct the election, or any two of them, and be publicly declared unto the people present.

SEC. 13. * * * * * And the said judge and inspectors, or any two of them, shall likewise prepare and execute under their hands and seals a duplicate certificate of such election, which *shall be filed in the office of the town clerk*, together with the *poll-list* of the election, to be USED AS OCCASION MAY REQUIRE; in all which certificates the number of votes for each candidate shall be written in words at length, and not in figures.—(Elmer's Digest, page 153, 154.)

Ohio Laws.

SEC. 10. That the judge to whom any ticket shall be delivered shall, upon the receipt thereof, pronounce, with an audible voice, the name of the elector, and if no objections be made to him, and the judge be satisfied that the elector is a citizen of the United States, and legally entitled, according to the constitution and laws of this State, to vote at the election, he shall immediately put the ticket in the box, without inspecting the names written thereon; and *the clerks of the election shall enter the name of the elector and number in the poll-books*, agreeably to the form pointed out in the eighteenth section of this act.

SEC. 11. That, at the close of the polls, the *poll-books* shall be signed by the judges and attested by the clerks, and *the names therein*

contained shall be counted and the number set down at the foot of the poll-books, in the manner hereinafter provided in the form of the poll-books.

SEC. 12. That, after the poll-books are signed in the manner herein-after contained in the form of the poll-books, the ballot-boxes shall be opened, and the ballots or tickets therein contained shall be taken out, one at a time, by one of the judges, who shall read distinctly, while the ticket remains in his hand, the name or names therein contained, and then deliver it to the second judge, who shall string it on a thread and carefully preserve the same. The same method shall be observed in respect to each of the tickets taken out of the ballot-box *until the number taken out of the ballot-box is equal to the number of names on the poll-books.*

SEC. 19. That, after canvassing the votes in the manner aforesaid, the judges, before they disperse, shall *put under cover one of the poll-books, seal the same, and direct it to the clerk of the court of common pleas of the county where the return is to be made; and the poll-book thus sealed and directed shall be conveyed by one of the judges, to be determined by lot, if they cannot agree otherwise, to the clerk of the court of common pleas of the county, at his office, within two days from the day of the election, and the other poll-book, when the same is not otherwise disposed of by this act, shall be deposited with the township clerk or clerk of the election district (as the case may be) within three days from the day of the election, there to remain for the use of the persons who may choose to inspect the same.*

No. III.

Extracts from the constitution and laws of Ohio.

Constitution, article IV, section 1. In all elections, *all white male inhabitants* above the age of twenty-one years, having resided in the State one year next preceding the election, and who have paid or are charged with a State or county tax, shall enjoy the right of an elector; but no person shall be entitled to vote except in the county or district in which he shall actually reside at the time of the election.—(Constitution of 1802.)

Constitution, article V, section 1. *Every white male citizen of the United States* of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county, township, or ward in which he resides such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.

SEC. 2. All elections shall be by ballot.

SEC. 5. No person in the military, naval, or marine service of the United States shall, by being stationed in any garrison or military or naval station within the State, be considered a resident of this State.

SEC. 6. No idiot or insane person shall be entitled to the privileges of an elector.—(Constitution of 1851.)

SEC. 7. That if either of the trustees, common councilmen, or clerk of any township shall fail to attend at the time and place of holding elections, or if either of them should be a candidate, then it shall be the duty of the electors present to choose, *viva voce*, suitable persons, (as the case may require,) having the qualifications of electors, to act as judges or clerk (as the case may be) of the election.

SEC. 15. That if a ballot shall be found to contain a greater number of names for any office than the number of persons required to fill that office, it shall be considered fraudulent as to the whole of the names designated to fill such office, but no further.—(General election act of May 3, 1853. Swan's Statutes, 341, 342.)

SEC. 2. The judges of the election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable :

First. The place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning.

Second. A person shall not be considered or held to have lost his residence who shall leave his home to go into another State for temporary purposes merely, with an intention of returning.

Third. A person shall not be considered or held to have gained a residence in any county of this State into which he shall come for temporary purposes merely, without the intention of making such county his home, but with the intention of leaving the same when he shall have gotten through with the business that brought him into it.

Fourth. If a person remove to another State with an intention to make it his permanent residence, he shall be considered and held to have lost his residence in this State.

Fifth. If a person remove to another State with an intention of remaining there for an indefinite time and as a place of present residence, he shall be considered and held to have lost his residence in this State, notwithstanding he may entertain an intention to return at some future period.

Sixth. The place where a married man's family resides shall generally be considered and held to be his residence; but if it is a place of temporary establishment for his family, or for transient objects, it shall be otherwise.

Seventh. If a married man has his family fixed in one place and he does his business in another, the former shall be considered and held to be his place of residence.

Eighth. The mere intention to acquire a new residence without the fact of removal shall avail nothing, neither shall the fact of removal without the intention.

Ninth. If a person shall go into another State, and while there exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this State:—(Act of March 20, 1841. Swan's Statutes, 351.)

SEC. 14. That whenever two or more ballots are found folded or rolled together, it shall be conclusive evidence of their being fraudulent.—(Act of 1852. Swan's Statutes, 342.)

No. IV.

Broad Seal case—Colored Voters.

Jacob W. Davis, a witness sworn on the part of John B. Aycrigg and others, saith: I am town clerk for the township of Mansfield, and was in 1838. I have the poll-list here; the names of Isaac N. Zerwilliger, Charles T. Poole, James Wamsley, William V. Schureman, and Christopher Patterson, usually called Eke, (on the assessor's duplicate it is Ezekiel) are on the poll-list. I was present when Patterson came forward to vote; he was challenged. I am not able to tell by whom, but it strikes me by Peter T. B. Van Doren. I can't say that Imla Drake was in favor of him; I recollect George Richey opposed him; I don't know what Richey's politics are, but I believe he is a whig; I know that Van Doren is a whig; I recollect some of the democrats were in favor of his voting. The objection made to him was, I believe, that Van Doren called him a negro. I know they got into a jar; they were all talking through one another, and I don't recollect particularly what was said; he was permitted to vote. I don't know how he voted; he never told me. I don't know how he was going to vote. Some of the judges asked me if he voted the year before, and I turned back to the poll-list of 1837, and found his name there. I don't know what ticket he had, but he told me this morning he had twenty or thirty. I gave him a democratic ticket, but he did not tell me he would vote it. He did not tell me he wanted to vote a democratic ticket, nor nothing of that kind. I don't know what his politics are, nor what he professes to be. I believe he is generally reputed in the neighborhood and treated as a colored man.

And being cross-examined, saith: I am acquainted with his mother, *she is a white woman*. About the time Van Doren made the objection, Van Netta made the reply, that if any man in the room would say that Patterson was a blacker man than Van Doren, he should not be allowed to vote. I don't recollect that any one said that he was darker than Van Doren; I know of his doing military duty. I paid his tax for him once in this township; I believe it is not known in the neighborhood who his father was; I know the one that is said to be his father; they both worked for an uncle of mine; but I don't know who his father was, only from report. Report always said that this man was his father. I am not right positive whether he was ever fined for not attending military duty; it strikes me I paid a fine for him for neglect of military duty in Greenwich, but I am not positive. He told me that my brother John gave Hugh Crotchley a ticket, and Crotchley gave it to him. My brother John argues on the whig side; Hugh Crotchley's politics is democratic. Patterson never told me that Van Doren gave him a ticket, as I recollect of; I am not able to say whether Patterson's mother was married or not; they came out of the State of Pennsylvania.

And being called again, in chief, saith: I don't know that his mother and reputed father lived together as man and wife. It was the general neighborhood belief that they were man and wife. His reputed father

was a mulatto, middling light colored. It was the general belief in the neighborhood that he was a colored man ; but whether he was treated as such, I don't know about that. I think Patterson has the appearance of a mulatto, but he is a *very white one*. James Van Netta is a strong Van Buren man, or democrat, I believe.

J. W. DAVIS.

Peter T. B. Van Doren, sworn on the part of John B. Aycrigg and others, saith : I was present at the election of 1838, when Patterson offered to vote, and opposed him on the ground of his being a colored man, and the men that brought him in knew it. They, Imla Drake and Marshal McWilliams, brought him in ; when I opposed him, James Van Netta advocated his voting, and wanted to put my complexion in comparison with his (Van Netta's) character. In the dispute, the whigs were the men that opposed him, and the Van Buren men were in favor of him. McWilliams, Drake, and Van Netta are all strong and active Van Buren men.

And being cross-examined, saith : I know that the men that brought Patterson in knew him to be a colored man, because they kept him so long in the room waiting for a favorable opportunity to bring him in—waiting to get the opposition out of the way. That is the only way that I know they knew he was a colored man, and that he was treated as such in the neighborhood, and they knew it. They kept him in the room, by persuasion, and not by being tied or holding him fast ; it required very little to do it. Locofocos can be kept in the bar-room without being tied—the majority of them. I mean by that, the majority of them are friendly to bar-rooms ; there is where they generally meet to make their stump speeches.

I never offered Eke Patterson a ticket. I did not talk with him, nor try to persuade him to vote the whig ticket. At the time these men kept him in the bar-room I was in the room where the poll was held part of the time, and part of the time in the bar-room and entry. I don't recollect of hearing any persuasive language from these men to him, to detain him in the bar-room, any more than they were around him. I did not hear what the conversation was.

Question. Did you hear Marshal McWilliams or Imla Drake persuade Patterson to remain in the bar-room an hour, or any other length of time, in order to get a favorable opportunity to vote ?

Answer. They were talking to him, but what the words were I did not hear ; they were talking to him, first one and then the other, until the time arrived to bring him in. I did not hear, with my own ears, language persuading him to stay, but they were talking to him ; first one went and then the other.

They wanted some one out of the way—they that were opposing him out of the way. I was out of the room when he was brought in, and was called in by John P. Davis. I think I was either in the bar-room or entry when John P. Davis called me in—I forget which ; when Marshall brought him in I was called in to oppose him ; I was in the room when he offered to vote ; I was not in the room when he came in to vote, but John P. Davis, I think, called me and told me

that they were bringing Eke, or Zeke, in to vote; Eke was standing by the box with his ticket when I came in the room.

Question. Will you be good enough to tell or explain how James Van Netta attempted to put your complexion in comparison with his character?

Answer. In trying to make it very dark.

And being called again, in chief, saith: The bar-room opens into the room where the poll was held. Both the bar-room and the room where the poll was held open into the entry. I believe the door between the bar-room and poll room was open pretty much all the time when I was here. I had before declared my intention to oppose Patterson if he was brought up to vote; it was reported that he was going to be brought up to vote. Jacob W. Davis, the town clerk, is a Van Buren man, or was at the time of that election.

PETER T. B. VAN DOREN.

John P. Davis, a witness produced, sworn, and examined on the part of John B. Aycrigg and others, saith: I know Patterson; I believe his real Christian name is Ezekiel; that is what he always calls himself; he is generally called Eke. I asked him, about three or four weeks ago, how he voted at the election of 1838; whether he had voted a democratic ticket or a whig ticket. He said he voted a democratic ticket; I asked him who gave him the ticket; he said my brother, Jacob W. Davis, gave him the ticket he voted. I told him then I understood that he said that he had voted a whig ticket. He said he had told Sam. Davis so to get clear of him, for he kept plaguing him; but he said it was not so.

And being cross-examined, saith: I did not give him a ticket; I did not give a ticket to any other person to give to him, as I recollect of. I cannot tell you whether Zeke can read; I do not know.

And being called again, in chief, saith: He is generally reputed to be, and is treated in the neighborhood as a colored man; he has lived with us for two or three years, and we have always treated him so.

J. P. DAVIS.

(3, House Reports, 1839-'40, No. 541, pp. 95 to 97.)

The testimony in relation to the vote of Ezekiel Patterson was read, and it was

Resolved, The vote of Ezekiel Patterson was not a lawful vote, and that it be deducted from the votes for P. D. Vroom and his associates.

All the members voting affirmatively, except Mr. Brown, who gave no vote on this resolution.—(Journal of Committee, *ibid.*, p. 26.)

Ezra Hill, said to be part negro, sworn, saith: That he voted in Pequannock in the fall of 1838; he rather thinks it was a whig ticket; he got the ticket of Lewis Tucker, and he believes he is a whig. They say that I am the son of Timothy S. Hill.

James R. Adams sworn, saith: He is acquainted with Ezra Hill and his father, Timothy S. Hill. Timothy S. Hill is the father of Ezra

Hill. He has known them for a dozen years past. Never heard it disputed about his father being Timothy S. Hill. He thinks Timothy S. Hill is about half black man. He saw Ezra Hill vote at the Pequannack poll in 1838 for members of Congress. The day after the votes were counted, the judge of election said if the objection to Ezra Hill's vote had been raised he would have sustained the objection as far as he had anything to do with it. He thinks Ezra Hill *rather exhibits* the African stock in his features; he has curled hair.

The question was asked witness, "did the judge of election ever put his protest on the poll-list against Ezra Hill's vote?" Witness answered: He did at *last fall's election*.

Cross-examined by William J. Hart.

Says he is acquainted with the mother of Ezra Hill. *She is a white woman*. He thinks his vote was not challenged at the poll in 1838. He has seen men that called themselves *white* men that were of as tawny complexion as Ezra Hill. They had not the African feature as strong as Ezra Hill has.—(*Ibid.*, p. 387.)

The testimony relating to the vote of Ezra Hill was read, and it was *Resolved*, That the vote of Ezra Hill was not a lawful vote, and that it be deducted from the votes for J. B. Aycrigh and his associates.

AYES—Mr. Fillmore, Mr. Medill, Mr. Thomas, Mr. Randall, Mr. Chairman—5; and no vote in the negative.—(Journal of the committee, *ibid.*, page 89.)

NEW YORK CASE.—MONROE *vs.* JACKSON.

Majority Report.

It being, then, in the judgment of the committee, perfectly clear that these *one hundred and sixty-three* paupers were permitted to vote, and did vote in the third district of the eighteenth ward, in violation of the law of New York, which confines the voters to the districts of their residence, the next inquiry submitted to the committee is, *for whom* did said paupers vote?

The committee do not doubt that they voted for the sitting member.

The gentleman was the candidate of the democratic party for Congress; the officers of the almshouse and hospital were all members of that party, and electioneering for the candidates of that party. They considered it their duty to get out every legal voter to promote the interest of the ticket; they distributed democratic tickets to the inmates on the morning of the election; they superintended the passage of the paupers out of the almshouse; had charge of the omnibus in which they were carried to the polls; and accompanied them to the polls. Odell swears that they would not let him "come near them;" that they would say, "Odell, after they have voted you may talk to them." Hasbrouck swears that the tickets taken to the almshouse to be cut, in the evening before the election, had on them the names of the regularly nominated candidates of the democratic party. Those tickets contained the name of David S. Jackson.

Crandall swears that there was a peculiarity in the tickets voted, by which he distinguished the whig from the democratic tickets; that "the democratic ticket was a largerticket, thicker paper, and different type from either the whig or native American;" and that he was confirmed in this when he saw the tickets taken from the box.

Ackerly, one of the inspectors, swears that the outward appearance of all the democratic tickets, whether voted by paupers or others, were the same; and so in regard to the whig tickets. He also says, "from the outward appearance, I think I could distinguish which was a whig and which was a democratic ticket as it was presented by the voter."

The committee do not hesitate to believe, from this mass of evidence, that these one hundred and sixty-three paupers (except, perhaps, some four or five who boasted that they had deceived the keepers, and the eighteen or twenty who resided in that ward before they went to the almshouse) voted illegally in the third district of the eighteenth ward for the sitting member. They would have to shut their eyes to all the known rules by which individual conduct is judged to come to a different conclusion. They desire no more convincing proof of anything than that they were taken from the almshouse with the express design that they should vote for the democratic ticket, and that they did so vote.—(2, House Reports, 1847-'48, No. 403, pages 8 and 9.)

Minority Report.

For whom were the alleged unlawful votes cast? For if it were shown that all these persons voted, and that they were not entitled to that franchise, neither of which has been established, yet it would be the duty of the contestant to go further, and prove that at least one hundred and forty-three voted for the sitting member, in order to produce any effect.

Let it be borne in mind that the names of twenty-five persons were on each full State ticket at that election. Other officers were voted for calculated to incite a far greater interest than member of Congress. Neither the electors nor the challengers would be as likely to pay attention to the member of Congress as to some of the more important officers. The assertion that the particular name of the sitting member was singled out from all the rest to be read through the folded ticket, can, at best, have but slight weight. The name of the sitting member was erased from many of the tickets, and on others the name of the sitting member was erased, and that of the contestant inserted. Who can tell how many of the votes thus changed by such erasure came from the inmates of the almshouse. Crandall, upon whose testimony the political complexion of the voters named in schedule C rests, in answer to the following question, "Do you mean to say that none of the persons whose names you kept voted the whig State ticket?" answered, "I do not mean to say that." It appears, from the evidence of Hasbrouck, that each of the inmates of the almshouse exercised his right to vote without constraint; that democrats and whigs, who were lawful voters, were furnished with permits without distinction, and all who chose had an opportunity to ride in a

public conveyance; that a large number of the inmates refused to take democratic tickets at the almshouse, and some said that they were going to vote the whig ticket.

Some said they had taken democratic tickets, but voted the whig ticket, and boasted of the deception.

Ackerly testifies that all of the inmates of the almshouse did not vote the same ticket. With this evidence in view, taken in connexion with the feeble evidence offered to show the votes given for the sitting member, it is just right to conclude that, if anything be lawfully proved, there is about as much evidence tending to show that a large proportion of the almshouse voters cast their ballots for the contestant as there is to show that such proportion voted for the sitting member.

Crandall kept no account with respect to the voters named in schedule B, nor in regard to the twelve embraced in the cross marks upon schedule C, making thirty-five votes. There is not a word of evidence showing how these thirty-five persons voted; but the burden of proving that these thirty-five persons voted for the contestant rests upon the contestant, which he has by no means relieved himself of.— (*Ibid.*, page 17.)

OHIO CONTESTED ELECTION.

Substance of the argument of the Hon. George W. McCook, before the Committee of Elections, in behalf of Mr. Vallandigham, January 15 and 16, 1858.

The memorial of Mr. Vallandigham, which has been referred to this committee, contests the right of Mr. Campbell to a seat upon the floor as the representative of the third district in Ohio. It not only denies his right, but alleges that Mr. Vallandigham, his competitor at the polls, was duly elected, and was entitled to have been returned.

The district in which this contest arises, although the least in territorial extent, except the two city districts so called, is one of the most populous in the State, and the election was one of the most bitter known to our political history. It resulted in the polling of nearly nineteen thousand votes, which have been returned as follows :

For Mr. Campbell.....	9,338
For Mr. Vallandigham.....	9,319
Majority.....	19

I propose, first, to discuss an objection which is sufficient to deprive Mr. Campbell of his seat, and then to consider the testimony in support of the affirmative claim of Mr. Vallandigham.

First. The election in the second ward of Dayton, in which Mr. Campbell had 92 majority, was altogether illegal, by reason of the incompetency of one of the two judges.

In Ohio, the councilmen of wards, of whom there are two, are *virtute officii* judges of all elections held therein.—(Swan's Statutes, 340, § 16.) One of the councilmen in this ward did not choose to preside at this election, but appointed a Mr. Sullivan to act as his substitute.—(Testimony, p. 50.)

The statute of Ohio regulating elections provides, in case of the absence of any judge, for supplying the vacancy by a *viva voce* choice of the electors present at the polls :

"That if either of the trustees, common councilmen or clerk of any township shall fail to attend at the time and place of holding elections, or if either of them should be a candidate, then it shall be the duty of the electors present to choose, *viva voce*, suitable persons (as the case may require) having the qualifications of electors, to act as judges or clerk (as the case may be) of the election."—(Swan's Stat., 341, § 20.)

Between the "election" and the "return" there is a palpable distinction. The former is the act of *choosing* representatives, the latter the *evidence* of the result of the *choosing*. The one is a *fact*, the other is *evidence* of the fact. The former is done by the people themselves, although in the presence of their agents, for that purpose appointed; the latter is furnished by these agents without the intervention of the people at all. The mode of each is always prescribed by law. But it is by no means of equal importance that the mode prescribed be in each case strictly pursued. In the former, the "fact" to be ascertained

cannot exist unless the mode has, in all essential particulars, been followed ; but the "fact" may exist, although the *evidence* of it may not be furnished according to law ; hence the "election" is *essence*, and the "return" *form*. Congress cannot, in any way, *make* the "fact," but may, at least, to a certain extent, receive *evidence* of the "fact," already existing, different from that prescribed by law.

Conformable to this reasoning are all the precedents. Congress has been very strict as to the manner of conducting elections, and very liberal, if not lax, as to the returns.

The following cases in point, as to the former, are cited :

Where the law required the election to be held by three *magistrates*, an election held by three persons, two of whom were *not magistrates*, was set aside.—(*Jackson vs. Wayne*, 1791 ; *Contested Elections*, 47.)

Where the inspectors or *clerks* of election neglect or refuse to take the oath of office, the election is void.—(*McFarland vs. Purviance*, 1804, *ibid.*, 131 ; same *vs. Culpepper*, 1807, *ibid.*, 221 ; *Easton vs. Scott*, 1816, *ibid.*, 272 ; and see, generally, *Contested Elections*, 73, 75, 76, 95, 101, 116, 250, 328, 336. Also, *House Reports*, 1839-'40, vol. 3, No. 541, pp. 699, 700.)

In making returns, the judges of election act ministerially for the most part ; in conducting elections, they act judicially—sitting in judgment upon the qualifications of the electors.

Now, that they, who are thus to pronounce judicially upon the highest right of freemen, shall themselves have been chosen *according to law*, as an essential pre-requisite to their right to act, is a proposition both of logic and common sense. The act of "choosing" is done by the people, and, when by ballot, consists in the depositing by the elector, *in the manner prescribed by law*, a ballot containing the name and office of the person voted for ; and, when *viva voce*, consists in declaring, in the presence of *persons legally competent to receive the declaration*, the person and office intended by the elector. In either case it is of the very essence of an "election" that the persons receiving the ballot or declaration, as the case may be, shall be competent by law to receive it. In the election or choosing, the people act, necessarily, through agents previously clothed with authority to perform the part of such agents ; and there can be no mode of conferring such authority except that prescribed by law.

Two modes, in the case of cities, are pointed out by the Ohio statute regulating elections : 1. The councilmen of each ward, who are *ex officio* judges of election ; 2. In case of the absence of both or either of them, judges of election are required to be *chosen, viva voce*, by the electors present, prior to the opening of the polls. This choice is made, in practice, upon motion, and a vote orally, or by dividing, or by holding up of hands, as is usual in public meetings.

That nothing resembling any such election or choosing of judge of election was had or done in the case in hand, is conclusively established by the evidence.—(*Interrog. 22*, p. 51 ; *Interrogs. 3, 4*, p. 57.)

But it may be said that, because no objection was made to Sullivan's acting as a judge of election by the electors present, therefore

there was *consent* on their part that he should so act, and that this consent is equivalent to an election.

To this I answer, first: That objection was made.—(Int. 36, p. 53.)

Second: That the reason it was not persisted in, and a vote *viva voce* demanded to the last, is, that the electors present understood that the councilmen who did not serve had appointed, and had the right under the city charter to appoint, Mr. Sullivan as his substitute.—(Int. 13, p. 50; Int. 19, p. 50; Int. 38, p. 53; Int. 5, 6, p. 57; Holliday's testimony, p. 65.) The consent which takes away error must not be founded on misrepresentation or misapprehension. It will not be pretended that the failure by the parties to an action at law to object to the trial of the cause before a court or judge not having jurisdiction in point of fact, yet supposed at the time to have such jurisdiction, would amount to a waiver of error.

Third: That consent or failure to object cannot dispense with the choosing *viva voce*, as required by the statute. Suppose that in the presence of all the electors of the ward it had been suggested, or even that a motion had been made and carried, that the vote of the ward be returned for the contestee, or the contestant, if you please, and that no objection had been made, but all had expressly acquiesced, and the vote of the ward been returned accordingly, without any other election having been held, would it, or could it be counted? In *Easton vs. Scott*, 1816, "Contested Elections," 272, it was decided that where the election is required to be by ballot, votes given *viva voce* cannot be counted.

The forms, then, of an election cannot be waived by consent, tacit or express.

Why, in the case of the clerks of election in the same ward the usual form of choosing *viva voce* upon motion and vote was gone through, although no one objected to their having been appointed in the same manner Mr. Sullivan was appointed, and yet in the latter no motion was made, or vote taken, under just such circumstances, I cannot understand.—(Int. 13, 14, 15, and 16, pp. 50, 51.)

As to the mode of choosing *viva voce* upon such occasions, besides the questions and answers just cited in this case, I refer to the New Jersey contested election, House Reports of 1839-'40, No. 541, p. 501 to 514; also, 543 to 549, 621, and 700. In that case there *was* a choice in the usual mode of the inspector, and no claim set up that it could be dispensed with.

This objection to the election, although a vital one, as the majority of the returned member in the ward is greater than his majority in the district, only goes to invalidate Mr. Campbell's right; and upon such a ground as this, it would be as wrong for Mr. Vallandigham to make claim to the seat as for the committee to adjudge in favor of such claim if made.

I proceed, then, to an examination of the facts disclosed by this testimony, upon which the claim of the contestant to the seat is founded; but before proceeding to do so, it is necessary to settle certain legal principles which shall control the investigation of those facts.

The following propositions I believe to be well founded upon both

principle and authority, and I shall assume them for the purposes of this discussion :

1st. The presumption is in favor of the legality of every official act performed by the judges of election, and the burden is with the party asserting illegality to establish it by evidence.

2d. This evidence must be the best which the nature of the case admits.

3d. Where the election is by ballot, it is competent to prove the declarations of the voter as to the candidate for whom a vote was cast and in some instances this is the only attainable and, therefore, the best evidence.—(New Jersey case, Majority Rep. No. —, vol. 3, p. 699 ; Minority Rep. ib., 748 ; also, *Farlee vs. Runk*, vol. 2, Rep. 310, p. 14.)

4th. For the same purpose, and standing on the same necessity, it is competent to show the political opinions and principles of the person voting, the party with which he acted, the persons who gave him the ticket, who accompanied him to the polls, and who maintained or opposed his right to vote.—(*Monroe vs. Jackson*, vol. —, Rep. No. 403, p. 9.)

5th. The declarations of a voter as to his qualifications as an elector are also admissible in evidence.

6th. If, under all the circumstances of the case, the testimony induces the belief of the fact sought to be established, it is accepted as proof. In other words, if there is a moral conviction of the fact, upon which persons would act in the ordinary transaction of life, it is enough.—(*Cushing's Law and Practice*, § 210.)

The apparent majority for Mr. Campbell, as I have already said, was only 19 votes. Each party claims that illegal votes have been polled for his adversary, and the whole number alleged to be illegal is 99. Of these Mr. Vallandigham challenges 73 ; Mr. Campbell, 26.

For convenience of discussion, these votes will be arranged under appropriate heads, without any regard to the order of the testimony, or distinction between the counties, wards, or townships where polled ; and wherever there are challenges by each party, which, upon fact or law, fall within the same class, they will be considered together, so that the same measure may fairly be applied by the committee.

The great majority of the challenges made by Mr. Vallandigham are to votes so clearly illegal that I will content myself with a mere reference to name and page, and I will only delay the committee by remarking upon those cases which may seem to require explanation, or which depend peculiarly upon the law of Ohio.

I. The scrutiny of the ballots and tally sheets by the judges of election, and the votes counted or rejected by them upon such scrutiny.

This involves ten votes : Mr. Vallandigham challenging 3 ; Mr. Campbell challenging 7.

To an intelligent comprehension of the questions here arising, it is necessary that I should refer the committee to the following sections of the act of May 3, 1852, regulating elections in Ohio :

“SECTION XIV. That whenever two or more ballots are found folded or rolled together, it shall be conclusive evidence of their being fraudulent.”

"Sec. XV. That if a ballot shall be found to contain a greater number of names for any office than the number of persons required to fill that office it shall be considered fraudulent as to the whole of the names designated to fill such office, but no further."—(*Swan's Statutes*, 342.)

Notwithstanding the title, which is limited to "State and county officers," the committee will perceive, by reference to the first section, that it is extended to the election of "representatives to Congress."

The burden of proof is, in every case, as we have seen, upon the party asking to reverse the decision of the judges of election. In the case of alleged illegality of a voter, very often no question has been raised before the judges of the election, and therefore no *decision* really made; and very rarely are all the facts before them. The fact that the voter was admitted, raises a very slight presumption only that he was a qualified elector.

But in the case of ballots, counted or rejected, usually the attention of the judges is called at the time, and with far better opportunities of judging than the committee can have, to all the facts of the case, and a deliberate judgment passed upon them. It was so here in all the cases presented by the testimony on either side. I admit, therefore, that a clear case of fraud or mistake must be made out, to justify the committee in reversing the decision.

As to the ballot in the second ward, Dayton, (Testimony, page 49,) not counted for the contestant, I claim that the opportunities for judging are just the same to the committee as to the judges, since the identical ballot itself is presented. It is a question of *intention* on the part of the elector, and to be decided upon actual view. That the intention of the elector was to vote for Mr. Vallandigham, is, I think, perfectly clear. The ballot was a "republican ticket," printed. Mr. Campbell's name was on it, printed. The elector did not intend to vote for *him*, because he erased his name from the ticket. He did intend to vote for Mr. Vallandigham for *some* office; for he *wrote* his name on the ticket. The pretence, alleged by one of the judges of the election, that he meant to vote for Mr. Vallandigham for *common pleas judge*, is simply absurd, and the reason he assigns still worse. Mr. Campbell and Mr. Vallandigham were the only candidates for Congress; and they were candidates for no other office. If the intention was to vote for Mr. Vallandigham for judge, why erase Mr. Campbell's name, and especially why not erase Mr. Parson's name, who was a candidate for judge?

The only apology for the pretence is, that Mr. Vallandigham's name is written below Mr. Parson's. But this is easily explained. The erasure and the writing are in pencil; usually they are done at the polls, and in haste; and evidently the elector, in his hurry, wrote the name lower down than he intended. And further, the erasure being very marked, there does not seem to have been room to write Mr. Vallandigham's name either above or below Mr. Campbell's. I submit, too, that there is "a pertinent designation" of the office, since Mr. Campbell's name *in print* is erased; Mr. Vallandigham's is *written*. He was a candidate *only* for Congress. Mr. Parson's name is not erased; every other office has the name of the appropriate candidate unerased upon the ticket; and, therefore, there is no other

office to which the name could apply. While Mr. Campbell's name being erased, the office "Congress" remains upon the ticket, accompanied by proof that Mr. Vallandigham, whose name is written on the ballot, was the only candidate for Congress, except Mr. Campbell. Upon these facts, can there be any doubt as to the intention of the elector?

As to the two ballots rejected in Lemon township, Butler county, (Testimony, page 129,) the proof is *clear* that it did require the counting of both to make the number of ballots correspond with the number of electors; and *no other* mode of making up the number is suggested. Moreover, although a "calculation" (probably by referring to the *tallies* for "Congress," which was not a sure mode, since there were blanks—Answer 204, page 130,) was made by the judges at the time the ballots were counted out, yet it does not appear that the *ballots* themselves were counted and compared with the number of electors registered on the poll-books. This was done the next day by both the clerks, and it was then ascertained that "it required these two votes to make the ballots correspond with the poll-books."

And further, the ballots seem to have been rejected *chiefly* because, by the "calculation" made at the time, they appeared to be more than the names on the poll-books, and *not* because they were declared, *when taken from the box*, to have been voted double.

As to the two ballots in *Harrison township*, disputed by Mr. Campbell, (pages 148, 152,) the testimony shows that the judge of election, *when taking the ballot from the box*, and before he could know whether it was democratic or republican, declared, "here is a double ticket," (pages 148, 153.) They were laid aside, and when the counting was nearly over, the question was taken up whether they had been voted double, and, after argument and altercation between the judges and the two outsiders, one of whom, Williams, is a witness, were *deliberately rejected*. Williams says he "*tried to satisfy the judges that they had been voted separately*, (page 148,) but he failed; and one of the judges declared it made no difference, they were voted together," (page 153.)

Further, in this case the number of ballots in the box, counting these two as a double ballot, exactly corresponded with the number of names on the poll-books, since one "justice's ticket" was found in the box (page 149) not folded up in another, as in one case, but by itself, and was left in the box; and thereupon the three judges, after argument and consideration, counted it as a ballot separately voted; and thus, in the language of the witness, "counting the two general tickets as one, and one of the squire tickets as another, gave a total number of ballots corresponding with the number of names on the poll-books; and *this disposition was made of the matter by the judges*," (page 149.) None of the judges were examined as witnesses.

As to the ballots rejected in Washington township, Montgomery county, (Testimony, pp. 155, 157, 158, 162,) claimed by Mr. C. to have been improperly rejected: The four ballots being found "*stuck together*" were laid aside as "double tickets." Upon counting out, there were found to be three hundred and eighty-four ballots, counting the two pairs as four, while the number of electors registered on

the poll-books was only three hundred and eighty-two. "Counting them as two votes," says one of the judges of election, here a witness, "would have made the correct number; but counting them as four, would have made an excess of two ballots over the voters registered," (pp. 155 and 157.) For this reason the judges, two republicans and one democrat, upon consideration, deliberately and unanimously rejected them as double. No explanation of the discrepancy is now set up, except the claim that two persons voted that day whose names are not registered on the poll-books. As to one of these (Allen) there is a total failure of proof; as to the other (Dodds) there is some proof that he voted, and one witness testifies that he had examined the poll-books, but did not find his name. Allowing this evidence all that it is worth, it fails still to explain away the discrepancy. Certainly neither the kind of testimony, nor the fact, if well proved, (as to Dodds,) can justify the committee in reversing the unanimous judgment of the judges of election, deliberately made upon actual view and with all the facts before them.

As to the "American ticket," with Mr. Campbell's name twice *written* upon it, it was properly rejected as fraudulent, both upon general principles and under the Ohio statute. In this instance, as in the first vote referred to, where the name of Mr. Vallandigham is written on the ballot, the committee has the same evidence before it as the judges of election had. Here there are more "names" than there are persons to be voted for, although the names are of the same person. It is very clear that the elector intended to vote for Mr. Campbell, but the judges supposed that he intended to have had it twice counted, and it was therefore wholly rejected.

I. The votes received and counted which are challenged on either side as illegal, and which distribute themselves in the seven following classes:

1. *Minors.*

Mr. Vallandigham challenges.....	4	
Mr. Campbell challenges.....	4	
	—	8

2. *Aliens.*

Mr. Vallandigham challenges.....	4	
Mr. Campbell challenges.....	3	
	—	7

3. *Mental incapacity.*

Mr. Vallandigham challenges.....	3	
Mr. Campbell challenges.....	4	
	—	7

4. *Non-residents of the State.*

Mr. Vallandigham challenges.....	31	
Mr. Campbell challenges.....	6	
	—	37

5. *Non-residents of county.*

Mr. Vallandigham challenges.....	9	
Mr. Campbell challenges.	0	
	—	9

6. *Non-residents of township or ward.*

Mr. Vallandigham challenges.....	0	
Mr. Campbell challenges.....	2	
	—	2

7. *Persons of color.*

Mr. Vallandigham challenges.....	16	
Mr. Campbell challenges.....	0	
	—	16

1. Of the first class in this arrangement, the testimony on both sides is very clear, and the committee can have no doubt that all the persons challenged as minors voted illegally, nor is there any difficulty in appropriating the votes between the contestant and the returned member, as the "boys" were very decided politicians.

2. *Aliens.*

The cases of Wright, Donaldson, Tehan, and Friday, are submitted without remark; and I shall comment on the testimony as to Robert Norris and William H. Gosline, challenged by contestant, and John M. Reian, challenged by Mr. Campbell.

Norris' testimony, pp. 106, 107.—He came to this country a minor, and might have been naturalized under the fourth section of the naturalization act, and as he swears he had a witness with him at the only time he was in court, the fair presumption would be in favor of the legality of the vote, if there were no other circumstances in evidence.

But his own declarations are contradictory. At one time he says he never was naturalized; that his father was. At another, that he did get "his papers" for a particular purpose. It may be said, this only renders the vote doubtful, and that the decision of the judges must stand.

But the Ohio statute, which is very strict in such cases, removes at once all doubt. By section thirteen of the act already referred to, a naturalized citizen must "produce his certificate," and this may be dispensed with if he makes oath that he was naturalized, and when and where; that he had a certificate, and "that *against his will* the same is lost, destroyed, or beyond his power to produce," &c.—(Swan's St., 353, sec. 13.) By the testimony it appears that no such proof was given, and by his own evidence that it could not have been made. He had got the paper for "a particular purpose," and had not had it for years. Why he got it, where it is, or why it was not in his possession, he has chosen to leave in mystery.—(The New Jersey case, "Gilbert Elliott's vote," p. 214; Journal of Committee, p. 49.)

William H. Gosline (p. 116) was born in Canada, and was never

naturalized. His father had been born in New York, but removed to Canada before the birth of his son, where he resided eight years.

Gosline, under the act of Congress of 14th April, 1802, (2 Stat. at Large, 158, sec. 4,) might, perhaps, upon his return to the United States, have become a citizen, notwithstanding his foreign birth. The language to which I direct attention is, "And the children of persons who now are, or *have been, citizens of the United States*, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States." By this the right of the child is made to depend upon the fact that the parent *had been a citizen*; and whether so or not at the time of the birth of the child was immaterial. This clause of the naturalization act is clearly repeated by the act of 10th February, 1855.—(Dunlap's Laws of the United States, 1451.) "That persons heretofore born, or hereafter to be born, out of the limits and jurisdiction of the United States, whose fathers *were, or shall be at the time of their birth*, citizens of the United States, shall be deemed and considered, and are hereby declared to be, citizens of the United States." There is in the act of 1855 no repealing clause; and although repeals by implication are not to be favored, it is clear that this must be construed to repeal the clause quoted from the act of 1802. Any other construction would leave the act of 1855 merely nugatory. It gives no new right; it enlarges no right already existing, and, unless it is to be construed as restraining or limiting the previous act, it has no office whatever to perform. The familiar rule of statutory construction which requires the court to give validity, if possible, to a legislative act, demands that this act should be construed as repealing the old provision. It is obvious that Congress had the naturalization act in contemplation, for the second section expressly refers to naturalization, and the proviso of the first section is in the same words as the proviso to the fourth section of the act of 1802.

The father of Gosline was not at the time of the birth a citizen of the United States. He was residing in Canada, and had been for years, and he abnegated his citizenship here by taking up a permanent residence in Canada, *animo manendi*, and the fact that he subsequently returned to the United States cannot affect the question, which is to be determined precisely as if he had died in Canada at the expiration of the eight years. He was *domiciled* there, and, in case of his death during the residence in Canada, his personal estate would have been distributed by the laws in force there, and not by the laws of this country. He expatriated himself by taking up his residence there, and, in case of removal to the British possessions, there could not be any other evidence of it than that afforded by permanent domicile, except in the rare cases of naturalization by act of Parliament, or letters patent declaring the person a denizen.

As to John M. Rein, (pp. 154, 173,) who voted upon a naturalization paper from the probate court, as is alleged, it might well be argued that this was a competent court under the act of Congress. It is a court of a State—a court of record—having a seal and a clerk, and it has some common law jurisdiction, although not a court of general jurisdiction. All the incidents, except as to jurisdiction, clearly concur in the probate court.

But conceding, for the argument, that the court had no jurisdiction for this purpose, that is wholly immaterial, because there is no competent evidence showing from what court the certificate of naturalization was issued. It is proved that the voter produced a *paper* purporting to be a certificate of naturalization, which the judges, upon inspection, decided to be sufficient. Whether it was issued by a competent court, or whether it was a final certificate entitling the claimant to a vote, this committee cannot inquire, because the paper itself, or a record copy, is not produced. It is a fact which rests in writing, and not only so, but is matter of record; and the paper itself, or the exemplification from the record, is the only testimony by which it can be tried. This case is fairly distinguishable from Norris' case, *ante*, for here the paper was produced, and the presumption is in favor of the decision of the judges.

3. *Mental incapacity.*

"No idiot or insane person shall be entitled to the privileges of an elector."—(Ohio Constitution of 1851, article V, § 6.)

These terms include, as I claim, all the various classes and phases of mental unsoundness—the degree, not the kind, being the only point for determination. The primary definition of an idiot is "a natural fool; a fool from his birth;" and of idiocy, "a defect of understanding; properly, a natural defect."—(Webster.)

The word "insane" is here used as the generic for all cases of mental imbecility.

In medical science, perhaps, the one is limited to the congenital absence of all intellect, and the other to a mad or delirious derangement of intellect. But the strictness of professional technology should not be applied here.

One of the voters objected to was actually under guardianship, having been pronounced an idiot by a jury.—(Cyrus Ayres, pp. 114, 122, 131.) Another, Maxwell, is declared to be idiotic by witnesses, professional and non-professional, who had been well acquainted with him for years, (pp. 39 to 47;) and as to Mr. Bolton, (p. 82, *et seq.*) it is clear from the testimony, not only that he did not know what he was doing, and had no capacity to understand it, but that in fact there was no volition at all on his part, and his hand was made use of by unscrupulous men to thrust a ticket in the ballot-box. Well might the judge say, as the ticket fell into the box, "I ought not to have taken it."—(Page 85.)

Ordinarily a just public sentiment is a sufficient safeguard against abuses such as these, and there has consequently been no decision in Ohio applicable.

But surely, although the person be not under a committee, if he is incapable from natural defect or imbecility consequent upon years from binding himself by a contract, or disposing of any property by will, he cannot exercise the right of suffrage.

I come now to consider the questions raised as to the legality of votes which depend upon the fact of residence in the State, county and ward of the persons casting them, and I invite the attention of the committee to the legislation of Ohio upon this subject. After the flood

tide of 1840, an act "to preserve the purity of elections" was passed in that State, making offences against the election law highly penal, and giving, by statute, rules for the determination of that much vexed question of residence.

"Sec. 2. The judges of the election, in determining the residence of a person offering to vote, shall be governed by the following rules, so far as they may be applicable :

"1st. That place shall be considered and held to be the residence of a person in which his habitation is fixed, without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning.

"2d. A person shall not be considered or held to have lost his residence who shall leave his home and go into another State for temporary purposes merely, with an intention of returning.

"3d. A person shall not be considered or held to have gained a residence in any county of this State, into which he shall come for temporary purposes merely, without the intention of making such county his home, but with the intention of leaving the same when he shall have gotten through with the business that brought him into it.

"4th. If a person remove to another State, with an intention to make it his permanent residence, he shall be considered and held to have lost his residence in this State.

"5th. If a person remove to another State with an intention of remaining there for an indefinite time, and as a place of present residence, he shall be considered and held to have lost his residence in this State, notwithstanding he may entertain an intention to return at some future period.

"6th. The place where a married man's family resides shall, generally, be considered and held to be his residence ; but if it is a place of temporary establishment for his family, or for transient objects, it shall be otherwise.

"7th. If a married man has his family fixed in one place, and he does his business in another, the former shall be considered and held to be his place of residence.

"8th. The mere intention to acquire a new residence, without the fact of removal, shall avail nothing ; neither shall the fact of removal without the intention.

"9th. If a person shall go into another State, and while there exercise the right of a citizen by voting, he shall be considered and held to have lost his residence in this State."—(Swan's Stat., 351.)

By the act of March 12, 1853, (Swan's Stat., 350, § 70,) it will appear that the provisions of this act apply to elections for presidential electors and representatives to Congress.

These rules, except the last, have been adopted by the general assembly, almost in word, from Judge Story's Conflict of Laws, sections 46, 47, and 48.

For the purpose of applying them to the facts, as disclosed by the testimony, I state the following propositions :

I. The removal, with family and goods, or either, and, if unmarried, without either, or after a sale of goods, to another State, with intent to remain *permanently*, or for an *indefinite time*, forfeits suffrage in Ohio.

II. The removal, with family and goods, or either, or after the sale of goods, or, if unmarried, without either, to another State, with intent to remain if the person should be satisfied with the country, and the actual taking of the new residence, forfeits suffrage in Ohio, although the person becomes immediately dissatisfied and returns to his former residence.

III. Although the original removal was for a temporary purpose only, if the person, when absent, forms the design to remain, either permanently or for an indefinite time, he forfeits his residence in Ohio.—(Story's Conf. Laws, p. 43, § 45.)

IV. Voting out of the State, without a subsequent residence of one year preceding the election, is conclusive evidence of loss of residence.—(Swan's Rev. Stat. 351, § 2, specification 9.)

4. *Non-residents of the State.*

Of this class, Mr. Vallandigham makes thirty-one challenges, and nearly all of them are clear instances of illegal votes.

The cases of Hudson George, pp. 11, 32; J. F. Morris, p. 34; J. Anderton, p. 37; George Sorbray, p. 55; Reuben Thomas, p. 71; William Lamb, pp. 108, 109; Samuel M. Neass, p. 112; Levi Neass, p. 113, challenges by the contestant; and W. H. Rowe, p. 161, and Stephen Lowe, p. 168, challenges by returned member, are submitted upon the testimony, and fall within proposition IV.

The cases of Benjamin M. Gump, p. 30; Woodbridge Odlin, pp. 34, 54; Samuel Heikes, p. 48; John Stroup, pp. 65, 68, 69; James T. Wilson, p. 76; James Finlan, pp. 103, 104, 105; Derrick Barclow, p. 108; J. Paulding, p. 117; Augustus Drayer, p. 118, and James Earhart, pp. 108, 120, challenges by the contestant; and Daniel Brenner, p. 150, challenged by returned member, are submitted upon the testimony, and fall within propositions I and II. Compare particularly Benjamin M. Gump, Hezekiah Houghtelin, Daniel Brenner, and J. M. Morrison.

The cases of A. K. Rice, p. 12; Joseph Smith, pp. 13, 14; J. T. Sage, p. 36; George Hartman, p. 59; Frank Riker, p. 61; Henry Hoyle, pp. 103, 104, 105; James Payne, pp. 110, 123; Andrew Coble, pp. 112, 117; James H. Foster, pp. 127, 128, challenges by the contestant; and Hamilton Wolff, p. 172, challenge by returned member, are submitted upon the testimony, each being challenged on the ground that he had never resided within the State a year preceding the election.

As to James Higgins, pp. 12, 36, in addition to the fact that he left the State six months before the election to go into business, for an indefinite period, in Indiana, it is proved that he voted in that State at the presidential election in 1856, six months' previous residence being requisite there.

The cases of James M. Morrison, p. 38; Daniel Davis, p. 73, are submitted upon the testimony, and fall within proposition III.

As to John Low, p. 81, the testimony shows that, in March, 1855, at Dayton, he enlisted in the army for five years, and left Ohio under that enlistment for the State of Missouri, where he remained four months, and then deserted. Whether previously to the enlistment he

had a residence in Ohio, does not appear; if he had, it is clear that he lost it by leaving the State to go to Missouri with the army.—(See Swan's St., 351, § 2, specification 5; Contested Election, p. 411. *Ib.*, 511.) And although, by his own testimony, it appears he was a year and two days in the State preceding the election, I claim that he could not acquire a residence. The constitution of Ohio, art. 5, § 5, declares "that no person in the military, naval, or marine service of the United States shall, by being stationed in any garrison, or military or naval station within the State, be considered a resident of this State;" and if stationed in Ohio, he could not acquire a residence there. Being a deserter, and never having been discharged, as he states, he is still, in presumption of law, in the service of the United States, and cannot, by reason of his desertion, be placed in a better situation than if he had been, in pursuance of his enlistment and the law, serving with his regiment at Dayton.

As to the votes of John Beck (p. 158) and George B. Richmond, (p. 163,) challenged by Mr. Campbell: although the *facts* are apparently dissimilar, yet the *principle* by which they are to be tested is substantially the same.

Beck was a married man, residing in Maryland till October 3, 1855, when he arrived in Ohio, and took up his residence in Montgomery county, with intent from that time to remain permanently, and become a citizen of the State. Both the criteria of residence exist—the fact and the intent.—(Story's Conf. of Laws, § 44.) He left his family in Maryland; but after he left, they were only temporarily remaining there until sent for; the delay being merely for "convenience."—(Que. 70, p. 159.)

Richmond had acquired citizenship in Ohio, by virtue of about two years' residence.—(Int. 107, p. 163.) His family became dissatisfied, and returned to New Jersey. *He* remained till after the election, not in *fraudem legis*, but *bona fide*, to settle his business.—(Ints. 107, p. 163; 119, p. 165.) Here the two criteria of loss of residence in Ohio did not exist; there was only the *intention* to remove, but not the fact of removal.—(Swan's Stat., 351, § 2, specification 8.)

Now, in the former case, the domicil of the wife followed the domicil of the husband; this is the general rule, (Story Conf. of Laws, § 46, p. 44;) nor is the case within any of the exceptions.

In Richmond's case, this same general rule must also apply; for, as in the former, the wife's remaining behind could not preclude the husband from acquiring a residence; so in this *her* removal, although with his consent, could not forfeit *his* residence.

In the former case, the removal of the husband, without the wife, forfeited his residence in Maryland, as it would unquestionably have done in Ohio, under similar circumstances; in the latter, the husband's remaining in Ohio, retained his residence until actual removal.

5. *Non-residents of county.*

*Of this class there are nine challenges, all by contestant.

*Prior to the session of the legislature in 1857, no fixed period of residence in a county, ward, or township, was required as a qualification for electors. Any person moving into a county on the day of election even, and declaring that he had come in for the purpose of

A. K. Tate, pp. 39, 42, 44, 46 and 47. His vote is challenged on two grounds: loss of residence in the State, and non-residence in the county. As to the former, the case falls within the second proposition I have made as to residence. As to the fact of loss of residence, see p. 43, interrogatory 7; p. 45, inter. 10; p. 46, inter. 19, 20, and 21; p. 47, inter. 7. As to non-residence in county, see p. 40, inter. 8, 9, and 10; p. 41, inter. 24; p. 43, inter. 7; p. 45, inter. 10, 11 and 13; p. 47, inter. 9.

— *Fisher*, p. 66, inter. 7, 8, and 9; p. 67, inter. 11; p. 68, inter. 28.

Henry Hermann: This is claimed to be illegal under the statute.— (Swan's Statute, p. 351, § 2, specification 7.)

As to how he voted: The testimony upon the contest for the office of sheriff is, for convenience, agreed to be used by consent (p. 89) as to this case and one other. Hermann appears to have voted for Emly for sheriff, (p. 88, inter. 18.) Emly was the regular republican candidate for Sheriff, (page 49.) The returned member was the regular republican candidate for Congress on the same printed ticket, (pp. 49 and 60, inter. 10.) As to the residence of his family, see p. 88, inter. 6, 7, 9, 11 and 12; p. 89, inter. 1.

The cases of—3, J. F. Palmer, pp. 77 and 79; 4, Joseph West, p. 79; 6, John Lamb, pp. 108 and 109; 7, Luther Gilliland, pp. 110 and 123; 8, H. H. Hall, pp. 111 and 119; 9, Jonathan Ogden, pp. 124 and 130, are submitted without any remark.

But *actual bona fide* residence was always, in fact, required by the law, howsoever it may have been disregarded in practice.

6. *Non-resident of township or ward.*

Two votes are challenged by Mr. Campbell on this ground; and although the testimony shows that they were legal voters of the State and county, they actually voted out of the township in which they resided, and it is conceded that this is a fatal objection, and they must be deducted from Mr. Vallandigham's votes.

7. *Persons of color.*

The contestant avers that twenty-five or more persons of this description voted for the returned member. The testimony, as far as taken in Butler and Montgomery counties, shows no testimony, for want of time, being taken in Preble, where the others of this class voted; that sixteen voted at the election here contested—four in Hamilton, and twelve in Oxford.

They are all described by the witnesses as "mulattoes" and "persons of color." As to the first four, Mr. Milliken, a judge of the election, 2d ward, says they were "mulattoes and persons of color," three of whom he had known personally before, and that there was in

making the county his home, was allowed to vote. Such cases were of frequent occurrence. Residents of other counties and districts, unusually unmarried men, "light to run away," were many times brought in to work at some trade or business until after the election, and under a facile conscience and a loose administration of the law, were procured and permitted to vote. Thus "pipe-laying"—"colonizing"—was an easy and not an uncommon thing; and to prove the offence next to impossible. This sad defect in the election laws of the State was remedied at the last session of the legislature, and a thirty days' residence in the county is now required.

each of the four a distinct and a visible admixture of African blood; in one of them (Anderson) he thinks there was more white blood than black; "as to the others, it was doubtful whether the white or black blood predominated.

As to the Oxford voters, the witnesses speak of some of them as "mulattoes," and *all* of them as of "mixed negro blood," "having a visible admixture of negro blood." The question of their color, blood, and race, was discussed by and before the judges of election, who, admitting they were "persons of color," of visible mixed negro blood, decided they "had a right to vote, because they were *more than half* white;" two of these judges were republicans, friends of contestee, and voted for him at that election.

That all these persons voted for Mr. Campbell there can be no doubt, although, for an obvious reason, their testimony has not been taken, except Alford Anderson's, and even this without the knowledge and against the wishes of Mr. Vallandigham; but my apology for it is, that, in debate in the House on the 8th of December, 1856, Mr. Campbell stated that "he would as soon believe Anderson's oath as that of any man upon the floor."—(Congressional Globe, p. 52.) With this endorsement I submit it.

The proof, then, that these mulattoes and persons of color voted for contestee, consists in the testimony of Anderson as to his own vote and the votes of Mitchell and Redman; the admissions of Lawrence and Cowan, as to the others, that they were brought or attended to the polls by the friends of contestee, challenged, and their right to vote disputed and "bitterly opposed" by the friends of contestant; their right favored and insisted upon by the friends of the contestee; that the friends of the contestant "had made an arrangement to have an elector inside at the polls *for the express purpose of* challenging *these identical men;*" their votes were received after challenge, discussion, and resistance, by the friends of contestant, a majority of the judges of election being republicans and friends of contestee, and that they were "mulattoes and persons of color," whose sympathies would naturally be with the candidates of a party which professed to be the peculiar friends of the African race. It may be added, also, as an "adminiculum" of proof, that the contestee *complains* (specification 9) that *more* of the same class of persons were not allowed to vote for him.

And, further, the history of this canvass would leave no doubt of the sympathy and suffrages of all this class. From the testimony in the case of Mr. Bolton, who has been already referred to under the head of mental incapacity, the committee can see the spirit in which the canvass was conducted. Mr. Bolton was carried to the polls; did not know the judges of election, his friends for twenty years; nor whether he wished to vote, nor what ticket, nor for whom; but he is asked "Don't you want to vote *against slavery?*" he answers "Yes;" and the ticket with Mr. Campbell's name was placed in his open hand, and the hand and arm are held out, by the persons who brought him there, to the judges of election, (p. 86.)

That these sixteen votes were all illegal, and this without any regard to proportion of white blood and black in the persons casting

them, as it was distinctly visible in all, would be too clear, I think, for argument if the question was now presented for the first time.

The word "white" occurs in the constitution of Ohio, descriptive of the persons entitled to suffrage under it. The same word occurs in twenty-five, at least, of the State constitutions, and by Congress it should be held to mean the same, whether in Connecticut or South Carolina. Its proper use, wherever it occurs in a constitution, is as a designation of "race" and not of "color;" but if of the latter, it means *white* and not white and black, nor any admixture of them in whatever proportion. If the blending appears distinctly, it is not white; and the person who bears the tinge of African blood visibly upon his face is not a white person, but a "person of color."

We find the words "persons of color" used as a generic expression, including all persons not of the white race :

1. In the legislation of the United States : The act of 1807, for the suppression of the slave trade, "negroes, mulattoes, and persons of color." The act for the enlistment on board vessels of war, where "persons of color," born in the United States, are distinguished from "citizens."—(Act of 1813, 2 Statutes at Large, 809.) There are many other instances in congressional legislation as well as in that of the States.

2. By the executive departments : It occurs in Wirt's opinion, denying passports, in 1821; Berrien's opinion to the same purpose, 1831; Fillmore's proclamation, 1851, by Daniel Webster, Secretary of State.

3. By the Supreme Court of the United States.—(*Scott vs. Sanford*, 19 Howard, 393, *passim*.)

4. By the committees of the House, and by the House itself. I refer now to the New Jersey case, where the very question here in controversy was decided.—(House Rep., 1839-'40, No. 541, pp. 95, 387, 698, 705, 729 ; and Journal of the Committee, 26, 89.)

In two instances, persons of color, *and more white than black*, were held to be incompetent to vote under the laws of New Jersey, which limited suffrage to white persons.—(Patterson's case, evidence 95, vote of committee, 26 ; Hill's case, evidence 387, vote of committee, 89.) I am aware that this committee, composed of very able men, was intensely partisan : Campbell of South Carolina, Brown of Tennessee, (now Postmaster General,) Governor Medill of Ohio, Governor Thomas of Maryland, and Rives of Virginia, of the majority ; and Mr. Fillmore, (since President,) Truman Smith of Connecticut, Mr. Botts of Virginia, and Randall of Maine, of the minority. I cite it because there was no vote by any member of the committee against the exclusion of such votes, and the reports, as well the minority as the majority, concur.

But it may be claimed that this is a question to be determined exclusively by the legislation of Ohio and the interpretation by her own courts of the clause in her constitution which defines the qualification of an elector, and I am admonished by the answer of Mr. Campbell to the notice of contest, that he relies upon some decisions in Ohio to sustain the position that persons "half white or more" were competent to vote for him ; and it is a matter of complaint, as I have already

said, that more of such persons would have voted for him, but were rejected. The ninth specification of his answer is as follows: "That persons, *half white and more*, entitled under the laws and decisions of the courts of Ohio to the right of suffrage, *who would have voted for me*, were refused the exercise of that right by the judges of the election."—(Testimony, p. 2,.)

Every lawyer in Ohio is familiar with the decisions to which reference will be made, and, before proceeding to discuss them, I deem it a duty to say that they were never accepted as law by the profession of the State nor acquiesced in by public sentiment, nor acted upon by the inferior tribunals out of a particular locality, nor satisfactory even there. That they were made by a divided court, the judges concurring to make them being all from the particular locality referred to, and the only member of the court who was outside of that locality dissenting in an opinion, which was admitted, by an almost entire concurrence of professional sentiment, to contain the reason and the law of the case. And when the supreme court underwent a change in the members composing it, the only reason why the decisions were not reversed must be found in the fact that plaintiffs, against whom a decision adverse to the cases referred to was made by the common pleas, were unwilling to take the question up for reconsideration.

The first case was *Gray vs. The State*, 4 Ohio Rep., 354, decided upon the statutory rule of competency of witnesses, which excluded blacks and mulattoes from testifying in a cause to which a white person was a party. The defendant was nearer white than a mulatto, and the decision *in favorem* was made, that a mulatto could not be a witness in behalf of the State. As this was a favorable construction of the statute, and made in a criminal cause, it passed without notice.

In another case, *Williams vs. School Directors*, Wright's Rep., 578, it was decided that the children of a white mother and a father three-fourths white could not be excluded from the common schools, the benefits of which were by statute limited to white children; and force was given to the consideration that the father was taxed for the support of the schools to which his children had been denied admission, as black and mulatto persons were the only persons exempted from taxation for school purposes, and that the father was not included within the exemption. But subsequent legislation indicates pretty clearly the opinion in Ohio as to the principle of this decision, and the following section is quoted:

"The words 'colored persons' and 'colored children,' as used in this act, and the act to which this is an amendment, shall be deemed and held to mean those who are reputed to be *in whole or in part of African descent*."—(53 Ohio Laws, 118, § 2, April 8, 1856.)

Again: the question as to the meaning of the word "white"—a word which, of all others in the language, ought to require no gloss—arose in *Jeffries vs. Ankeny and others*, which was an action brought by a person, the offspring of a white man and a half-breed Indian woman, against the judges of election for refusing his vote, and the judgment of the court was for the plaintiff, that he was white and entitled to suffrage, the court giving weight to the fact that persons of partly Indian descent "were members of the bar, had exercised po-

litical privileges, filled offices, and worthily discharged their duties, and that disfranchisement for this cause will be equally unexpected and startling."

By these gradations the court approached the case of *Thacker vs. Hawk and others*, 11 Ohio Rep., 379, which was an action brought against the judges of election for refusing the vote of the plaintiff, "the evidence tending to prove that he had some negro blood in him." The court below was asked to instruct the jury, "that if the plaintiff was nearer white than mulatto or half-blood, he was entitled to vote," which the court refused, but did instruct "that if the plaintiff had any negro blood whatever, he was not entitled to vote." Exception being taken to the charge, the case went on error to the supreme court. It was not argued for defendants in error at all, and this is the whole decision of the majority:

"This case presents the same question as in *Jeffries vs. Ankeny et al.*, and must be decided by the same principles. The court charged the jury that, if the plaintiff had any negro blood whatever, he was not a lawful elector. That charge was wrong, and judgment must be reversed." But Judge READ, who dissented, delivered an opinion, covering six pages of the report, which was worthy to stand for a monument over his early grave. I need but refer to it; the majority could overrule the judgment, but, being unable to answer the argument, were wisely silent. And this is a faithful summary of the cases in Ohio which have brought so much and such undeserved odium upon the State. The negro case is decided upon the authority of *Jeffries vs. Ankeny*, (the Indian case,) and that upon the cases of *Williamson*, construing words in the school law, and of *Gray*, construing the statute excluding blacks and mulattoes as witnesses. For each of the three earlier cases an able legal argument could readily be made, whilst the negro suffrage case stands without apology in reason, and is rested upon authority, whilst there is none in point to sustain it. I have delayed the committee too long by the statement of the Ohio cases, for they have nothing to do with the determination of the question. They all arose under the constitution of 1802, which gave the right of suffrage to "white inhabitants." In the constitution of 1851, the clause as to the elective franchise is in these words: "Every white male citizen of the United States, of the age of twenty-one years, &c."—(Constitution, art. V, sec. 1.) The committee will mark the change by substitution of the words "citizen of the United States," for "inhabitant."

The term "citizen of the United States" is used, and where must we look to ascertain who are included within that designation? The House, undoubtedly, judges absolutely of the election of its members, but will so judge with great respect for the decisions of the Supreme Court of the United States construing the Constitution of the United States, although the court of this State had given a contrary construction.

This does not derogate from the sovereignty of Ohio, nor the dignity of her supreme court, because no person can be a citizen of the United States except under the Constitution and the laws in pursuance thereof; and the construction of that instrument and those laws is de-

volved on the Supreme Court of the United States, which, for this purpose, is the tribunal of last resort. But in the consideration of this case it is unnecessary to go so far; for, admitting that a State has the power to make any persons competent to vote for representatives in Congress, whether citizens or aliens, black or white, bond or free, and admitting also the proposition, that to the supreme court of a State belongs the interpretation of her constitution and the construction of her statutes, these votes are still illegal. Citizenship of the United States is a part of the qualification by the paramount law of the State, and the supreme court of Ohio has given no construction to the section of the Constitution under consideration. As it is thus *res integræ* in Ohio, I appeal for a construction of the clause to the decisions of the Supreme Court, and to the House of Representatives, unembarrassed by any conflicting decisions of the State tribunals. The case of *Dred Scott vs. Sanford*, 19 Howard, 393, is an express adjudication of the very question. The case is too familiar to require a reference; but the court decides that a person, the descendant of a negro imported to this country and sold as a slave, cannot be a citizen of the United States. Now, it is true there is no testimony in the case that the votes complained of were cast by the descendants of African slaves, except that unmistakable proof of race which feature and complexion furnish, and history is the witness to whom I refer for the descent of all this class.

Look for a moment to the consequence of a decision by the House that these persons are qualified voters in Ohio. Compare the section of the Ohio constitution I am considering with the second section, article first, of the Constitution of the United States, and it is apparent that, except as to time, the qualifications of a voter in Ohio are the same as those of a member of the House of Representatives. The present case involves only the "election" of one member of the House of Representatives, but the principle to be determined involves, necessarily and logically, the qualification of members in the future.

If these persons of color were qualified electors in Ohio; qualified to defeat Mr. Vallandigham and elect Mr. Campbell, then they are citizens of the United States, qualified to be your peers in the hall—to sit in the place of Mr. Speaker, and preside over the deliberations of the House.

A.

C. L. VALLANDIGHAM, CONTESTANT, vs. LEWIS D. CAMPBELL, THE SITTING MEMBER IN THE THIRTY-FIFTH CONGRESS.

The entire notice* in this case (with the exception of the 11th and 16th points) is too *vague* and *indefinite* to authorize the contestant to offer any evidence under the same.

By the act of Congress of February 19, 1851, it is provided: "That from and after the passage of this act, whenever any person shall intend to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the member whose seat he designs to contest, of his intention to contest the same; and, in such notice, *shall specify particularly the grounds* upon which he relies in the contest."—(9 U. S. Stat., 568.) From this clear and explicit language, it is more than manifest that the contestant was bound to "*specify particularly*" all the grounds that he relied on to invalidate the returned member's election. Such being undoubtedly the evident design and object of the law, as well as the express requirements of its letter, the contestant had no right to deal in vague and indefinite allegations in his notice; and by so doing he has precluded himself from offering any evidence under the same. For, by the 9th section of said act of Congress, it is further expressly provided, "That the testimony taken by the parties to the contest, or either of them, shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer mentioned in the first and second sections of this act."

* The following is the notice of contest:

DATTON, OHIO, December 24, 1856.

SIR: You will take notice that I will contest your right to a seat in the House of Representatives as the member from the third congressional district of Ohio in the thirty-fifth Congress, the grounds of contest being as follows:

1. That, at the election held on the 14th day of October, 1856, in counting out, sundry ballots were rejected by the judges of election which should have been counted for me.
2. That, in counting out, sundry ballots were counted by the judges of election for you which should have been rejected.
3. That sundry persons were permitted to vote for you in townships and wards of which they were not legal residents.
4. That sundry qualified electors who were offered to vote for me, and who were legal residents of the ward or township in which they offered to vote, were wrongfully refused their votes, on the ground of non-residence in the ward or township.
5. That sundry persons, not legal residents or electors of Montgomery county, were permitted to vote for you in said county, while sundry others, legal residents and electors thereof, who offered to vote for me, were illegally rejected.
6. That sundry persons, not legal residents or electors of Preble county, were permitted to vote for you in said county, while sundry others, legal residents and electors thereof, who offered to vote for me, were illegally rejected.
7. That sundry persons, not legal residents or electors of Butler county, were permitted to vote for you in said county, while sundry others, legal residents and electors thereof, who offered to vote for me, were illegally rejected.
8. That sundry electors were permitted to vote for you more than once at said election.
9. That sundry qualified electors were, by threats, procured to vote for you, who, but for

On no principle whatever, then, can the contestant be permitted to offer any evidence under the general, vague, and indefinite allegations in his notice. For not only was he required by the first section of the act to *specify* in his notice, *particularly*, all the grounds of contest, but moreover, by the express provisions of the 9th section of the same, he is prohibited from offering any evidence of any fact not alleged and specified in the notice.

With such plain, express, and positive provisions of the statute on this subject, it is clear, beyond the possibility of a doubt, that no evidence whatever can be received under the general allegations of contestant's notice.

In the case of *Archer vs. Allen*, recently before Congress, the Hon. T. L. Harris, in speaking on this subject, says :

"It is true that a notice that the sitting member's seat would be contested was served upon him within the time required by law ; but it is equally true that the notice did not contain any of the specifications which the law requires. It is also true that the contestant, when he gave that notice, did not know how he was to contest it, or upon what particular grounds ; or if he did, he was guilty of disingenuousness in not specifying them, as the law, as every sense of fairness, required him to do. But from the testimony, we are left without a doubt that when he gave the notice he did not know how, or upon what points, he was to make the contest. In his notice, therefore, he dealt only in

said threats, would have voted for me ; and sundry others, qualified electors, were, by threats, deterred from voting for me, who, but for such threats, would have so voted.

10. That sundry qualified electors, some not able to read at all, and sundry others not able to read the English language, were fraudulently furnished with ballots which they were led to believe, and did believe, contained my name, while, in fact, said ballots contained yours, or were blank ; by reason whereof said electors were prevented from voting for me as they intended.

11. That, in the second ward of the city of Dayton, John B. Chapman, one of the councilmen of said city for said ward, declined to serve as a judge of said election, and, of his own authority, and without any choice, *vis a vis* or otherwise, by the electors present, appointed Stith M. Sullivan to act as judge of election in his place, objection to his (said Chapman's) right to appoint being at the time made by the electors present.

12. That sundry persons, not of the age of twenty-one years, were permitted to vote for you.

13. That sundry persons, not residents of the State one year next preceding the election, were permitted to vote for you.

14. That sundry persons, idiot and insane, were permitted to vote for you

15. That sundry persons, not "white male citizens of the United States," were permitted to vote for you.

16. That Alfred J. Anderson, John M. Mitchell, James Robbins, Reuben Redman, Thos. Tester, John D. Robbins, Alexander Proctor, Cyrus H. Cowen, Robert Goings, W. Griffith, and twenty-two others, mulattoes and persons of color, not qualified electors of Ohio under the constitution and laws thereof, were permitted to vote for you

17. That sundry persons, not having all the legal and constitutional qualifications of electors, were permitted to vote for you

18. That sundry persons, having all the legal and constitutional qualifications of electors within this State, and who offered to vote for me, were rejected.

19. That other irregularities, defects, and illegalities were permitted or occurred in conducting said election, whereby my rights as a candidate were prejudiced.

You will further take notice that I claim to have received a majority of all votes legally cast at said election, and that I am therefore legally entitled to represent the qualified electors of the third congressional district of Ohio in the thirty-fifth Congress.

C. L. VALLANDIGHAM.

Hon. LOUIS D. CAMPBELL.

generalities. He constructed a drag-net notice, by which he could include everything which chance or circumstances might reveal."—(App. to Cong. Globe, 1st sess. 34th Cong., vol. 33, p. 929.)

And in the minority report of the Hon. Alexander H. Stephen, W. R. Smith, and J. H. Savage, to Congress, in the above case of *Archer vs. Allen*, this strong and forcible language is used :

"First, as to the admissibility of the testimony produced, by which the alteration is sought to be made ; and secondly, the effect of the testimony, even if received.

"And, on the first head, they would say, in the first place, no allusion to such an error in the count in the Lexington precinct is made in the original notice given by Mr. Archer, the contestant, to Mr. Allen, the sitting member, of his intention to contest the seat under the act of 1851. This will be seen by reference to exhibit A. The only specification in that notice is in these words : 'That the returns made by the returning officers, as officially announced, are incorrect, and the poll-books of the several counties of this district show that I received a majority of the legal votes polled in the said district,' &c. The notice is without any *particular specification*. It is almost, if not quite, as *general* as it could possibly be made. But by the law of Congress, passed February 19, 1851, under which these proceedings were instituted, and by which it seems to us the investigation should be governed, it is provided in section 1, 'That from and after the passage of this act, whenever any person shall intend to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice in writing to the member whose seat he designs to contest of his intention to contest the same, and in such notice shall specify particularly the ground upon which he relies in the contest.' The notice of the contestant was within the time required by law, but contained no reference whatever to this *particular ground now insisted upon*. It was almost as vague and indefinite as if it had simply notified the sitting member that the contestant intended to claim the seat upon the grounds that he was duly elected, and the sitting member was not. If he had at the time intended to insist upon a recount of the ballots at the Lexington precinct, was he not bound, under the law, to make the peculiar specification ? Thirty days were allowed him to prepare all his grounds. This Lexington precinct affair seems to have been an afterthought. It was not alluded to in the notice, and if we are to be governed by the law of Congress, the investigation should be confined to the grounds particularly set forth in the original notice. The law of Congress we do not regard as merely directory or commutative, but as peremptory and binding in its import and intention, as any other law regulating any other judicial proceeding. The House, in judging of the election returns of its members, sits as a court. Their proceedings are judicial in their character, and why is it not as competent for Congress by law to regulate the proceedings in this court as in any other ? And if such regulations are made, why are they not as binding ? This is an important point, and the undersigned insist upon the propriety of its observance by the House, not so much in con-

sideration of any bearing it may have on the merits of this case, as on account of the consequences which will naturally follow the precedent which a disregard of it would establish. It would amount, in their opinion, to nothing short of a practical repeal of the statute in this particular. Nor do we think the force of this point is at all weakened by any act of the sitting member in his answer to the general notice given him. In that answer he simply joins issue on the grounds presented, as they stood stated under the law, and on that issue he still stands."—(*Archer vs. Allen*, Con. Elect. Ca., pp. 12 to 13.)

The remarks, too, of Chief Justice Eustis, in the case of *Perkins vs. Potts*, (Annual La. R. 15,) would seem to apply with great force to this case. That learned judge well says:

"Vague and general allegations cannot support a petition in an ordinary civil suit. The cause of action, the object of the demand, and the nature of the title, must be stated with such certainty as to apprise the defendant of every circumstance necessary to put him on his just defence, and to bar a subsequent investigation of matters once decided. A party can be permitted to derive no advantage from the obscurity or generality of his allegations. The allegations of the petition are all of that character, except that relating to the abandonment, and not sufficient to put the defendant on her defence.

"Sound policy requires that there should be no relaxation of these rules, especially in proceedings of this kind, which involve the fate of individuals and the most important interests of society.

"There is no proceeding in the ecclesiastical courts of England in cases of this kind without a proper statement of the facts charged."

So, in this case, sound policy, as well as the express requirements of the act, demand that a party should not be permitted to deal in general and vague allegations in his notice. If he has any particular or valid grounds on which to contest the election, it is but just and reasonable, as well as required by the statute, that his adversary should be apprised of the same, so as to enable him to prepare his defence.

And on the other hand, if the party knows of no particular ground on which to contest the election, he has no cause of complaint, and cannot be permitted, under the act, either to make general and indefinite allegations in his notice, or to give any evidence of any fact not particularly set forth in his notice.

In the case of *Brereton vs. Hull*, (1 Denio's R., 75,) which arose under the bankrupt act of 1841, it was held that a general notice of fraud in reply to the certificate of discharge was not sufficient, and that the party could not be permitted to offer any evidence in support of the general allegation of fraud and concealment of property.

Chief Justice Bronson, in the above case, says, the discharge is made conclusive evidence in favor of the bankrupt, unless impeached for same fraud, &c., "on prior reasonable notice, specifying in writing such fraud or concealment."—(Ib. 77.)

And at pages 78, 79, he holds this strong and forcible language: "The specification is nearly in the words of the statute, and is quite too general to inform the defendant what charge he must be prepared to repel on the trial."—(*Service vs. Heermance*, 2 John. R., 96.) "If the plaintiff knows that there were any unlawful preferences in con-

templation of bankruptcy, he can specify what in particular they were. If he has no such knowledge, this is then a mere fishing suit, which deserves no encouragement." "The defendant should be fairly apprized of the proof which he may expect to meet on the trial." "The plaintiff must be more particular in his allegation, and tell us what he means by concealment; otherwise we cannot say that the replication contains a good answer to the plea; nor will the defendant have 'reasonable notice' of what may be urged on trial."

The principle and reasoning of the above decision would apply with great force to this case; and this more especially as the act in regard to contested elections not only requires the contestant to "specify *particularly*" the grounds on which he relies in the contest, but further provides that neither party shall give any evidence of any fact not particularly specified.

It may, however, be said that the case in 1 Denio was at law, and that therefore the same does not apply. But in 14 Barb. R., 326, it is well said: "The result of an election, when controverted in court, is like a judgment sued upon." And in the report of the majority of the committee in the case of Archer *vs.* Allen, it is well and correctly said: "The House in judging of the election returns of its members sits as a court. Their proceedings are judicial in their character, and why is it not as competent for Congress, by law, to regulate the proceedings in this court as in any other? And if such regulations are made, why are they not as binding? This is an important point; and the undesigned insist upon the propriety of its observance by the House, not so much in consideration of any bearing it may have on the merits of this case, as on account of the consequences which will naturally follow the precedent which a disregard of it would establish."—(Archer and Allen's Case, Minority Report, p. 13.)

Of course, then, if the House sits as a court in trying a contested election case, (as it most undoubtedly does,) it must observe all the rules and express requirements of the statute relating to such cases.

And even according to the practice of the House before the passage of the act of 1851, a contestant was required to state all the grounds of contest particularly, and was not allowed to give evidence of any act which was not specified in his petition.

In the case of Michael Leib, the committee in their report to Congress use this emphatic language: "A petition against the election of any person returned as a member of the House of Representatives, ought to state the ground on which the election is contested, with such certainty as to give reasonable notice thereof to the sitting member, and to enable the House to judge whether the same be verified by the proof, and if proved, whether it be sufficient to vacate the seat; and the petitioner ought not to be permitted to give evidence of any fact not substantially alleged in his petition."

So in Easton *vs.* Scott, Contest. Elect. Ca., 272, it was ruled that if voters are objected to on account of the want of legal qualifications, the party excepting to them should, before taking, give notice to his adversary of the *particular* qualifications in which they are deficient; and that a general averment in the notice that the voters are illegal

is not sufficient ; and the names of persons excepted to must also be stated.

And in *Luttrell vs. Hume & Joliffe*, 4 Douglass' Election Cases, 146, the Committee of Elections in the British Parliament "*Resolved*, That the evidence proposed to be given cannot be gone into, the matter not being alleged in the petition."—(See Cont. Elect. Ca., in Congress, 166.)

How much more, then, should a contestant be required, *under the law*, to specify particularly each and every one of the grounds of contest upon which he relies.

The act, then, requiring the party contestant to "specify, particularly, the ground upon which he relies in the contest," and also further providing that the parties "shall be confined to the proof or disproof of the facts alleged or denied in the notice," &c., a contestant cannot be allowed to give any evidence under mere general allegations in his notice. To permit him to do so would be to disregard the plain and positive provisions of the statute in relation to contested elections, which, in order to promote justice and secure a fair and impartial investigation, should be strictly observed.

2. As to the *hearsay testimony* in this case it is clearly inadmissible.

Not only is hearsay testimony not admissible on legal principles, but sound policy requires that in cases of contested election it should not be received. Once let it be recognized that the result of an election may be changed or altered by hearsay testimony, and no election whatever can stand. And when we add to this the fact that if hearsay testimony were received that there would be no end to the evidence, to say nothing of the frauds it would engender in contested election cases, the necessity for its exclusion becomes imperative.

The Hon. T. L. Harris, in speaking of hearsay testimony, in *Archer vs. Allen*, forcibly remarked : "There is some testimony that certain persons said that they had heard another man say that he had voted for Mr. Allen, when he had no right to vote. But are we to disfranchise a congressional district of a hundred thousand inhabitants on hearsay testimony that would not be received in a magistrate's court when a shilling was in controversy?"—(App. to Con. Globe, 1st sess. 34th Congress, vol. 33, p. 929.)

And the minority, too, of the committee, in their report of the case of *Archer vs. Allen*, (page 16,) well and admirably says :

"Next, as to Alfred Cowden, the only evidence is that he was heard to say that he had voted at the election ; that he had voted for Allen ; that his vote had elected him, &c. ; and that he was not of age at the time. This evidence, the undersigned are clearly of opinion, is *hearsay evidence of the worst sort*. It is no evidence at all. It would not be received as evidence in any court, and it never should be received in cases of contested elections before this House, for by the admissibility of such evidence it would be the easiest matter in the world to set aside any close election, and defeat the will of the majority, by getting persons to say that they had voted illegally for the man whom perhaps they had used their greatest efforts to defeat. Falsehoods, where there is no solemnity of an oath, are often resorted to in elections in canvassing before the people against a candidate be-

fore an election, as all of us perhaps well know ; and who that would tell a lie before an election would not do the same thing after it, if he could thereby effect the same object?

But if there was any room for doubt on this subject that don't must be forever dispelled by the judgment of Chief Justice Marshall, in 7 Cranch's R., 295-6.

"That hearsay evidence is incompetent to establish any specific fact, which fact is in its nature susceptible of being proved by witnesses who speak from their own knowledge.

"However the feelings of the individual may be interested on the part of a person claiming freedom, the court cannot perceive any legal distinction between the assertion of this and of any other right, which will justify the application of a rule of evidence to cases of this description which would be inapplicable to general cases in which a right to property may be asserted. The rule, then, which the Court shall establish in this case will not, in its application, be confined to cases of this particular description, but will extend to others where rights may depend on facts which happened many years past.

"It was justly observed by a great judge that 'all questions upon the rule of evidence are of vast importance to all orders and degrees of men ; our lives, our liberty, and our property, are all concerned in the support of these rules, which have been matured by the wisdom of ages, and are now revered from their antiquity and the good sense in which they are founded.'

"One of these rules is; that 'hearsay' evidence is in its own nature inadmissible. That this species of testimony supposes some better testimony which might be adduced in the particular case, is not the sole ground of its exclusion. Its intrinsic weakness, its incompetency to satisfy the mind of the existence of the fact, combine to support the rule that hearsay evidence is totally inadmissible.

"To this rule are some exceptions which are said to be as old as the rule itself. These are cases of *pedigree*, of *prescription*, of *custom*, and in some cases of *boundary*. There are also matters of general and public history which may be received without that full proof which is necessary for the establishment of a private fact.

"It will be necessary only to examine the principles upon which these exceptions are founded to satisfy the judgment that the same principles will not justify the admission of hearsay evidence to prove a *specific fact*, because the eye-witnesses to that fact are dead. But if other cases are standing, or similar principles should arise, it may well be doubted whether justice and the general policy of the law would warrant the creation of new exceptions. The danger of admitting hearsay evidence is sufficient to admonish courts of justice against lightly yielding to the introduction of fresh exceptions to an old and well established rule, the value of which is felt and acknowledged by all

"If the circumstances that the eye-witnesses are dead should justify the introduction of testimony to establish that fact from hearsay, no man could feel safe in any property, a claim to which might be supported by proof so easily obtained.

"This subject was very ably discussed in the case of *The King*

against the inhabitants of *Eriswell*, where the question related to the fact that a pauper had gained a residence, a fact which it was contended might be proved by hearsay evidence. In that case the court was divided, but it was afterwards determined that the evidence was inadmissible.

"This court is of the same opinion.

"The general rule comprehends the case, and the case is not within any exception heretofore recognized. This court is not inclined to extend the exceptions further than they have already been carried."— (See also 1 Greenleaf's Ev., § 124.)

The hearsay testimony in this case, then, is clearly illegal and incompetent to prove any specific fact, and must be rejected.

3. The objections raised in the *eleventh* paragraph of the notice, as to the validity of the election at the second ward poll in the city of Dayton, are of no force or validity whatever.

In the first place, the evidence shows that the judge of the election to whom objections are made was duly and properly chosen as such, according to law.

Examination of Thomas H. Phillips, (p 52.)

"Question 27. Was there any one among the bystanders who objected to Sullivan as a judge of the election on that day?

Answer. No objection made.

Question 28. Was Clement L. Vallandigham there when Sullivan arrived, or at any other time during the morning before Sullivan arrived?

Answer. I think he was there all the time.

Question 29. Did he seem to desire that Sullivan should serve as judge on that day?

Answer. He made no objection to me. I paused to see if any objection would be made, and then swore Sullivan in."

Examination of S. M. Sullivan, (p. 58.)

"Question 9. What occurred on the morning of the 14th day of October last, on your arrival at the polls in the second ward? State fully.

Answer. When I arrived at the polls, several voices cried out, 'Here he comes; swear him in, so that the polls may be opened.' There was not to exceed some ten persons present, and I thought all desired me to act as judge.

Question 10. Was any objection made to you by any of the bystanders?

Answer. None whatever.

Question 12. Was the outcry, of which you speak, made by those who were waiting at the polls to vote; and if so, did they generally join in the outcry of 'Here he comes; swear him in,' &c.?

Answer. It was from the bystanders, and it was general from all present.

Question 13. Were the *duties* of the judges and clerks of the election then and there discharged *faithfully and impartially*?

Answer. They were."

From this extract from the evidence, there can be no doubt whatever but that Sullivan, the commissioner, was properly and legally chosen.

But even were it otherwise, still the election at the second ward polls in Dayton would be a good and valid election. For the provisions of the statute in relation to the mode and manner of holding and conducting elections is merely directory, and the non-observance of the same has always been considered as a mere irregularity, but not of such a nature or character as to invalidate the election, unless it is expressly so declared in the statute.

This subject underwent a full and thorough investigation in New York, in the case of *The People vs. Cook* 14 Barb. R., 245, and the rule as above laid down, fortified and established beyond all doubt, by an irresistible train of reason and authority.

Mason, C. J., in delivering his opinion in the above case, pp. 285 to 311, holds this strong and forcible language:

"It becomes important, in this case, to determine whether the objections which are taken to the inspectors of elections in the several cases presented in this bill of exceptions are of that character which should be held to invalidate the canvass in these several localities. These objections are of a twofold character, extending to the regularity or legality of their appointments, and of their omission to qualify by taking the proper oath of office. I will not stop to inquire whether these inspectors, in these several cases, were inspectors *de jure* or not. It is sufficient that they were inspectors *de facto*. They came into office by color of title, and that it is sufficient to constitute them officers *de facto*. The rule is well settled, by a long series of adjudications, both in England and this country, that acts done by those who are officers *de facto* are good and valid, as regards the public and third persons who have an interest in their acts, and the rule has been applied to acts juridical, as well as ministerial, in their character. This doctrine has been held and applied to almost every conceivable case. It cannot be profitable to enter into any extended discussion of the cases. The principle has become endless in which the rule has been applied."

"It was also proved that these persons who signed this return officiated as inspectors in said election district all day, and that no question was raised by any one as to their right to act; and that no persons claimed to be inspectors that day in said district but them."

"It was held in the case of *Greenleaf vs. Lowe*, (4 Denio, 168,) that a person elected to the office of justice of the peace, but who has neglected to take the oath of office and to give the security required by law, is nevertheless in office by color of title, and his acts are valid as regards the public and third persons. To the same effect is the case of *Weeks vs. Ellis*, where the justice had entered upon the duties of his office without taking the oath prescribed by law, (2 Barb. S. C. Rep., 320.) The same rule was applied to commissioners of the highways who had omitted to take the oath of office, in the case

of *The People vs. Covert*, (1 Hill, 674;) and the same rule was applied to a constable, in the case of *The People vs. Hopson*, (1 Denio, 575;) and in the matter of the election of directors of the Mohawk and Hudson Railroad company, (19 Wend., 135,) the doctrine was applied to inspectors of election, where it was expressly held that, being officers *de facto*, their omission to take the oath prescribed by the statute did not invalidate the election. This disposes of the question of the oath in regard to these inspectors, as well as the clerks of the board; and the only remaining question is, whether these inspectors are to be regarded as officers *de facto*, acting under color of legal authority. Lord Ellenborough said, in the case of *The King vs. The Corporation of Bedford Level*, (6 East., 356, citing *Ld. Raym.* 660,) that an officer *de facto* is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. It is a general rule in relation to public officers, that they may establish their official character by proving that they are generally reputed to be, and have acted as such officers, without producing their commission, or other evidence of their appointment.—(4 John., 366; 3 Id., 431; 6 Binn. Rep., 88; 9 Mass. Rep., 231; 7 John., 549; 9 Id., 125; 12 Id., 296; 5 Wend., 231; 9 Id., 17.) The plaintiffs proved that Seymour Ames was reputed to be an inspector of election district number two in the town of Chesterfield; and that he acted as such is also proved. It was also *prima facie* proved, that there were no other inspectors present, when he proceeded to appoint Beardsly and Weston inspectors.”

“This doctrine that the acts of an officer *de facto*, which concern the public, or the rights of third persons, are good and valid, has been applied to cases where the whole official duty of the officer, in its nature, consists in the performance of a single act.”—(19 Wend., 144; 12 Mad Rep., 467; *Plumer vs. Briscoe*, 11 Ad. and Ellis, 54; 63 Eng. Com. Law Rep., 53.)

“It is not, therefore, necessary to consider whether the defendant could legally claim the right to prove that these officers were not, in fact, inspectors duly elected or appointed. There is, however, no principle better settled than that the acts of officers *de facto* are valid when they concern the public, or the rights of third persons, who have an interest in the thing done, and that their title to the office cannot be inquired into, collaterally, in this manner.”—(*The People vs. Bartlett*, 6 Wend., 423; *Same vs. White*, 24; Id., 520; *Same vs. Covert*, 1 Hill, 674; *Same vs. Stevens*, 5 Id., 616.)

“If these statutes are to be considered as merely directory, in the respects where they have been departed from, in this election district, then, of course, these departures from the directions of the statutes will not invalidate this canvass. If, on the contrary, a strict compliance with the statute is held to be imperative, to give validity to the canvass, then, most certainly, the votes cast in this election district cannot be allowed to the candidates. That some of these provisions of the statute are to be regarded as directory to these officers, and not conditions imposed, without which their acts would be held to be void, I think cannot be questioned; indeed we have already seen that one very important provision of this statute has been held

to be merely directory, and that, too, the important one which requires the inspectors to take the constitutional oath before they enter upon the duties of their office. Whether these other provisions of the statute which have not been strictly observed in this case are to be regarded as directory, or mandatory or not, must depend upon a sound construction of the nature and object of the requirements. There are, however, certain known and well settled rules to be observed in the construction of these statutes, which have been settled by our courts, and which may be regarded as safer guides to courts than the individual private judgment of a judge. And one rule is, that statutes directing the mode of proceeding by public officers are directory, and are not to be regarded as essential to the validity of the proceedings themselves, unless it be so declared in the statute."—(*Holland vs. Osgood*, 8 Vermont R., 280; *Corliss vs. Corliss*, Id., 290.)

"And so in the case of the Mohawk and Hudson Railroad company, (19 Wend., 143,) before referred to, it was held that the statute requiring inspectors of corporate elections to take an oath is merely directory, and as there is no nullifying clause, on account of the omission, that the election is not invalidated by such omission to comply with the statute."

"The legislature, in these enactments, undoubtedly intended to impose upon these officers, having the charge of conducting the election and canvassing the votes, a faithful observance of these provisions, as well to secure the public interests as the rights of electors; but I cannot think they intended that an omission to comply in the particulars where they were departed from in this instance, whether the same occurred through the ignorance or inadvertence of the inspectors, should have the effect to deprive a whole district of their suffrage. This would be punishing the innocent for the sins of the guilty."

"The fact that a part of the time there were four inspectors at the poll, and that the returns were signed by four, cannot affect the election. This was undoubtedly an irregularity, but cannot invalidate the election."—(7 Wend., 264; 1 John., 500)

"I cannot but think, however, that to hold the omission of these officers, through negligence, mistake, or inadvertence to comply with all these directions of the statute, should have the effect to disfranchise the electors, would be unjust in the extreme, and indeed subversive of the fundamental principles of our government."

With such an unbroken current of authority in favor of the position that statutes prescribing the mode and manner of holding and conducting elections are merely directory, and that the non-observance of the same will not invalidate the election, unless it is so expressly declared in the statute, we think there is no ground whatever for any exceptions as to the mode and manner in which the election was conducted at the second ward polls at Dayton, and that the same was a valid election. For, as is well said by Mr. Justice Gray, in the foregoing case of *The People vs. Cooke*, 14 Barb. R., 326: "The result of an election, when controverted in court, is like a judgment sued upon.

We have no power to reverse it for errors in conducting it, and thus give those concerned in it a retrial."

4. The 16th paragraph of the notice shows no course for changing the result of the election.

For even if the *ten* persons named in the notice were not legal voters, (only *one* of whom, however, is proved to have voted for the sitting member,) this could not change or alter the result, as the sitting member would still have a clear majority of all the votes cast.

And as only *ten* are named, it is very clear that under the act of Congress, as well as the precedents of the House, the contestant could not be permitted to give any testimony as to others not named.—(Cont. Elec. Ca., 272; *ib.* 165, and note; 9. U. S. Stat., §§ 1, 9.)

For the above and foregoing reasons alone, then, we submit that the sitting member is clearly entitled to his seat, and that his election must stand.

But in addition to the conclusiveness of these legal objections to contestant's claims, we have the further insurmountable barrier, that the testimony wholly fails to make out his case.

For when a party controverts an election, he must make full proof of the fact that he, and not the party who has obtained the certificate, is elected.

In the case of *Easton vs. Scott*, (Cont. Elec. Ca., 278,) it is well said by the Committee of Elections, that "in cases where the person returned comes rightfully by the certificate of election, then he ought to keep his seat till it is shown that he is not entitled to it." Being rightfully in possession of the certificate, the legal presumption is that he was duly elected. And "where the law raises a presumption in favor of the fact, the contrary must be fully proved."—(1 Stark. Ev., 452, *side fo.*, Met. & Ing. ed., 1832.)

The distinction (says this same learned author on page 451) "between full proof and mere preponderance of evidence is, in its application, very important. And "evidence which satisfies the minds of the jury of the truth of the fact in dispute, to the entire exclusion of every reasonable doubt, constitutes full proof of the fact," &c.—(1 Stark. Ev., Met. & Ing. ed., 449, top page.)

But "a mere preponderance of evidence, such as would induce a jury to incline to the one side rather than the other, is frequently insufficient. It would be so in all cases where it fell short of fully disproving a legal right once admitted or established, or of rebutting a presumption of law.—(Ib. 451.) Tested by these well recognized principles of evidence, the testimony wholly fails to make out the contestant's case. For not only do we find the entire absence of evidence sufficient to rebut the legal presumption in favor of the sitting member's election, (14 Barb. 326,) but on a fair scrutiny of the testimony, (including even the hearsay,) the scales are clearly inclined in favor of the sitting member to his seat.

And if to this we add the fact above stated, that evidence to be sufficient to rebut or overthrow the presumption of law in his favor arising from the fact of the legal possession of his certificate, must fully disprove and satisfy the mind of the contrary, to the entire ex-

clusion of every reasonable doubt, this contestant may truly be said not to have a *locus standi in judicio*.

It is, therefore, respectfully submitted that the sitting member must retain his seat.

L. MADISON DAY,
Attorney.

(B.)

VALLANDIGHAM vs. CAMPBELL.

Memorandum of points submitted by the sitting member.

Mr. Campbell, the sitting member, sought heretofore an opportunity to have the case opened for full and complete testimony, desiring and challenging the most thorough investigation and trial of his right to the seat he holds. With this view he demanded that some further time should be allowed, of which both parties would have had the benefit. His request was enforced, among other reasons, by the exhibition of affidavits showing the character of other important evidence which he would obtain if a little additional time were allowed, and which, with much besides, had not been procured because of the extraordinary course pursued by the contestant. This application, being referred by the Committee of Elections to the House for its decision, was refused by the House; and the case was remitted to the committee for examination and report thereon. In this condition of the case, and thus instructed, the committee, very properly, perhaps, before resuming their consideration of it, adopted for the rule of their further investigation, a resolution to confine the parties to the narrow and absolute limits of the time prescribed by the statute. The resolution is as follows:

"At a meeting of the Committee of Elections, held at their room February 15, 1858, the following preamble and resolution were considered and agreed to:

"Whereas the House has declined to give the parties leave to take further testimony—

"*Resolved*, That the committee proceed to make up the result of the election on the testimony filed, regularly taken within the sixty days, except where the parties agreed that testimony otherwise taken may be read.

"From the minutes:

"PHILIP JOHNSON,
"Clerk Committee."

No one regrets more than does the sitting member that the field of fair and full inquiry has been thus technically closed or restricted. Compelled, however, to meet the issue as presented, and to have it tried on the record as already made up, he proceeds with confidence still to defend his right as the legally elected representative of his district, perfectly sure that a candid examination of all the papers and

proofs on file, and an application to them of the rules and principles of law, reason, and just construction, will establish that right beyond question.

The grounds of defence are various, and almost each one of them is believed to be a complete answer to all that is exhibited by the contestant to sustain his case.

1. The first proposition submitted by the sitting member is, that no testimony is to be held as competent, or should be considered, which has been taken under any of the nineteen grounds of contest specified by the contestant, except only under the 11th and 16th specifications; and that all testimony by which the contestant seeks to prove, under those specifications objected to, or under any of them, that persons voted at the election in question who were not legal or qualified electors, either by reason of non-residence, minority, imbecility of mind, or other disqualification, the names of such persons claimed to have illegally voted not being disclosed by the contestant in his specifications, should be stricken out.

On this point, in addition to what is contained in the heretofore printed argument and authorities submitted by his counsel, Mr. Day, (pages 1 to 8,) a further and particular reference is made to the case of Joseph B. Varnum, in the 4th Congress.—(See contested election cases, pp. 112, 113.) In that case the Committee of Elections “prayed the instructions of the House *as to the kind of specification* that shall be demanded of the petitioners;” and the House, after full discussion, “resolved, that the allegation [‘that five votes were received and certified by the presiding officers which were given by persons by law not qualified to vote at said meeting’] *is not sufficiently certain, and that the names of the persons objected to for want of sufficient qualifications ought to be set forth prior to the taking of the testimony.*” Now if this were the true and only safe rule when there had been no previous regulations laid down to guide the parties, *a fortiori*, must it be the right and obvious construction of a law of Congress, and the proper practice under it, when that law in direct terms requires that the party “shall specify, particularly, the grounds” of contest. And if such was regarded as a wise and necessary course of proceeding when elections were loosely managed, and it was more difficult for parties to comply with the rule, how much more proper to adhere to it, when elections are more systematically conducted, as in Ohio, and the names and qualifications, and all that pertains to the character of voters, so easily capable of proof because of the forms and guards and recorded evidence with which the law has surrounded them.

But if it be held that the notice given by the contestant is sufficient to lay the ground work for his proceeding to take testimony under such vague and general specifications, then it is objected that in another particular his case is fatally defective, because—

2. The paper presented to the House, and referred to the committee on the 6th January, 1858, purporting to be a certificate of the secretary of State of Ohio of the abstract of votes given at the election in question, should not be considered and taken as any part of the testimony in the case, for the reason that the said certificate was obtained,

or taken and filed since the expiration of the sixty days allowed by the statute for taking testimony.

If this objection be considered as strictly technical, it is yet one which is justly and fairly made, under the harsh decision of the House refusing to the sitting member the further opportunity to produce his testimony, and under the resolution of the committee confining the case strictly to the evidence taken within the time limited by law.

This certificate of the secretary of state of Ohio is here only *as evidence*. It is not, nor are its contents, any matter of which the House has knowledge, without proof regularly taken. All that the House has knowledge of, *ex officio*, is the certificate of election from the governor of Ohio, verified by the seal of the State, presented by the sitting member as the evidence of his right to be sworn in and to take his seat. Whether that certificate was founded on a majority of one vote, or one hundred, or a thousand, is of no consequence, and cannot be officially known to the House until shown by the contestant as a part of his evidence. On him is the *onus probandi*. But the evidence on this point comes too late, and *without* such evidence, no matter what amount of other proof there may be, it is impossible to make any calculation to show who received a majority of the votes of the district.

But if these exceptions should be overruled, and it is decided to pass on to the consideration of the testimony presented in support of his claim by the contestant, other objections, radical and completely fatal to his case, lie at the very threshold.

It will be borne in mind that the task is with the contestant to *establish affirmatively, by sufficient and proper evidence*, the errors and wrongs which he alleges to exist, and which have resulted in the return of the sitting member instead of himself. To correct and purge the poll, as he claims to do, by subtracting from the number of votes counted for the sitting member, he must prove clearly these three things: That any person whose vote is objected to did in fact vote; that the vote was given and counted for the sitting member; and that such vote was illegal, by reason of some want of qualification as an elector on the part of the person voting. But an examination of the testimony which has been furnished, and on which the House is called to act and decide, exhibits a most extraordinary deficiency in all these particulars.

3. The sitting member claims that there is no testimony *whatever* which is competent to be considered to show that any one of the various persons, whose vote is for any cause objected to as illegal, *voted at all*—there being no production either of the original poll-books required to be kept, and which were kept, under the laws of Ohio, at the election, nor of any officially certified copies, or sworn copies, or any copies whatever, of said poll-books, or any of them.

This objection is founded on the fact that in the State of Ohio the lists of votes kept at an election are made matters of formal *record*. The law provides with great care, by various provisions, for the preparation, the form, the return and safe-keeping of those records for all persons "who may choose to inspect the same."—(See Swan's

Revised Statutes of Ohio, pages 342, 343, 344, sections 17, 18, 19, of "An act to regulate the election of State and county officers.")

4. As a corollary to the preceding proposition, the sitting member demands to have suppressed, and excluded from consideration, as containing but secondary and therefore under the circumstances of the case incompetent testimony, the two several depositions of James Giffen and the two several depositions of Z. W. Selby; the said witnesses undertaking to state that certain names of voters are to be found on the poll-books. And he protests for the same reason against all other depositions, or parts of depositions, by which the contestant offers and attempts to prove *the contents* of any of the poll-books officially kept at said election.

No principle of the law of evidence is better settled, or founded on sounder reason, than that which excludes such secondary evidence, when a resort could be had to the highest, the best, the record evidence, provided for the perpetuation of the fact sought to be established. Any departure from this rule in such a case as the present would be dangerous. It has ever been observed in the former practice of Committees of Elections and of Congress. The great and leading object for preserving such records of elections must be to have them to produce subsequently in case of contests. It is, to say the least, a most loose and unpardonable attempt of the contestant, to fail to bring forward such primary evidence, and to seek to substitute for it, in some instances, the partial and *ex parte* inspections of witnesses, and in others, the recollections and impressions of bystanders. If such proceeding were allowed, it might very readily occur that a vote would be proved illegal, and stricken off the poll of one of the parties, under the impression of witnesses that such a vote had been counted, when in fact no such vote had ever been given. The contestant in this case well knew the law, and had access to the records, and could have called on the custodians of them and obtained this best and only proper evidence, as he has himself made appear by his examination of one of the county clerks of the district for another purpose.—(See deposition of Adam Miller, printed testimony, pages 58, 59.) The contestant is surely not to be permitted now to excuse himself from so flagrant a neglect to produce this necessary proof.

But if this general exception to the entire testimony for want of the production of the poll-books, or proper copies thereof, should not be sustained, and if the depositions on file are to be examined, then, still:

5. The sitting member claims and demands that the committee shall suppress or strike out, as not to be considered competent testimony, all depositions, or parts of depositions, by which the contestant undertakes to prove, either from the admission of the voter when not under oath, or by any other hearsay evidence, for whom or how any person voted, whose vote is for any cause objected to. And particularly he specifies and objects to the depositions of the following witnesses, as containing and consisting of such hearsay matter, to wit:

John Ensey.....	} Depositions as to the vote given by Joseph
Daniel Henry.....		Smith, pages 13, 14, 15.
Franklin Holliday...	} Depositions as to vote of Woodbridge Odlin,
John W. Larue.....		pages 34, 54, 55.

- Milton McGrew..... }
 W. P. James..... } Depositions as to votes of A. K. Tate and John
 Robert G. McEwen.. } Maxwell, pages 39 to 47.
 M. P. Swadener..... }
 J. E. Furnass..... Deposition as to vote of George Hartman,
 59, 60, 61.
 Tobias Wenger..... Deposition as to vote of Frank Riker, pages
 61, 62.
 David Ecker Deposition as to votes of Jesse Curtis, Ellis
 Jennings, Edward McMurray, John Hicks,
 and A. Clark, pp. 62, 63, 64.
 Adam Deam..... Deposition as to vote of *one* Fisher, pages 65 to
 68.
 Jonathan D. Tilton.... Deposition as to vote of Daniel Davis, pp. 73,
 74, 75.
 James C. Kelly..... } Depositions as to vote of J. F. C. Palmer.
 Amos Decker..... } pages 78, 79.
 Jacob Arnet..... Deposition as to vote of Joseph West, pp. 79,
 80.
 Ephraim Ayres..... } Depositions as to votes of James Finlan and
 Jacob Troutman.... } Henry Hogle, pages 103, 104.
 Thomas Millikin..... Deposition as to votes of Alfred Anderson,
 John M. Mitchell, Reuben Redman, and
 James E. Robbins, pages 104, 105, 106.
 Jaques Speer..... Deposition as to James Ledwell, pages 107,
 108.
 F. Van Derveer..... Deposition as to William Lamb and John
 Lamb, pages 109, 110.
 John Gilmore..... Deposition as to vote of H. H. Hall, pages
 119, 120.
 James McFlynn..... Deposition as to vote of Andrew Coble, page
 112.
 Samuel M. Neas..... So much of deposition as to vote of Levi Neas,
 pages 112, 113.
 Michael Kumber..... } Depositions as to vote of Cyrus Ayres, pp. 114,
 M. C. McMaken..... } 115.
 William Davidson..... Deposition as to vote of J. G. Paulding, page
 117.
 William H. Keepers... Deposition as to vote of Henry Kneirnan,
 pages 117, 118.
 William E. Drayer Deposition as to vote of Augustus Drayer,
 pages 118, 119.
 N. O. Conley..... Deposition as to vote of Isaac Walk, pp. 122,
 123.
 Johnson McGehan..... Deposition as to vote of Jonathan Ogden,
 page 124.
 Wm. J. Mollyneax.. } Depositions as to votes of John D. Robbins,
 J. D. Ringwood..... } Alexander Proctor, Thomas Tester, Ephraim
 S. Jones, Evan Huffman, Arthur Huffman,
 Cyrus H. Gowan, Robert Goings, W. Griffith,
 William Lawrence, W. Huffman, and Alfred
 Huffman, pp. 125, 126, 127.

The inadmissibility of this hearsay testimony has been forcibly argued, and with sufficient array of authorities upon a point of law so well settled, by Mr. Day.—(See his printed brief in this case, pages 8 to 10.)

It would be a most dangerous precedent, in investigations of this kind, as well as a departure from one of the very elementary principles of evidence, to trust to any but the most absolute testimony of a third party, as to the character of a vote given by an elector, when that elector himself is a competent witness to the fact, and could be called on by the contestant to give his deposition.

Supposing every preliminary point that has been made to be decided against the sitting member, and that the case sought to be made by the contestant, loose and vague as it, without any clear motive of the grounds on which he claims the seat; without timely proof of the vote returned for the respective parties; without the production of the poll-books, or any official or proven copies of them, to show who did vote, is to be tried as upon its merits, and letting in, for all that it is worth, the testimony that has been laid before the House, still there is a signal failure to show cause for ousting the sitting member.

A fair analysis of all the depositions, according to the plainest and admitted rules of law and evidence, can end in no result but to confirm the judgment of the returning officers.

It has already been shown how large a portion of the testimony on file must be rejected as embodying merely hearsay statements.

The objection taken by the contestant to the polls of the second and third wards of Dayton seem scarcely to merit a notice. The point is set completely at rest, however, by the citations in the printed brief of counsel, (pages 10 to 15.) It will be a novelty in practice, as well as an outrage upon popular and constitutional rights, if ever, for *such* formal and pretended causes, a fairly conducted election of the people is to be set aside, and the voters disfranchised.

Only *one* of the votes objected to, on the ground of disqualification of the voter for his African blood—that of Alfred J. Anderson—is proved to have been given, and given for the sitting member. Of the other nine named in the 16th specification, there is no competent evidence. If the decision of the supreme court of Ohio (*Jeffreys vs. Ankeny et al.*, 11th Ohio Reports, pp. 372 to 375) is to be regarded as authority, Anderson's vote is a legal one. But if rejected, it could not change the result.

If it be admitted that the four ballots for Campbell, excluded from the count in Washington township, Montgomery county, were rightly rejected, and if full weight be given to all else that can in any light be considered as proven by the depositions, it is believed that the following must be the *most favorable* summing up which can be possibly made for the contestant:

L. D. CAMPBELL—Returned vote.....9,338.

Deduct, as proven bad, the votes of—

Hudson George,
A. H. Rice,
J. F. Morris,
J. T. Sage,

John White,
Jos. Wright,
A. M. Bolton,
Derrick Barkalow,

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J. M. Morrison,	James Paine,	
Samuel Heikes,	David Donaldson,	
George Sowbray,	Cyrus Ayres,	
W. H. Houghtelin.....		15

9,323

Add vote improperly rejected because Campbell's name "for Congress" was written twice, (pages 155 to 158;) and two votes improperly rejected in Harrison township, Montgomery county, appearing from weight of testimony not to have been "double," (pages 148, 150, 152)..... 3

Makes Campbell's total vote..... 9,326

- C. L. VALLANDIGHAM—Returned vote..... 9,319

Deduct, as proven bad, the votes of—

Daniel Tehan,	John W. Shroyer,	
Peter Furey,	Wm. H. Rowe,	
Daniel Brenner,	L. S. Denius,	
Henry Friday,	Geo. B. Richmond,	
Israel Landis,	Jacob Friedline,	
John Beck,	Stephen Wolf,	
John Ryder,	William Rea,	
Franklin H. King		15

9,304

Add two votes improperly rejected in Lemon township, Butler county, (page 129,) being not probably "double"..... 2

Makes Vallandigham's total vote..... 9,306

Total to count for Campbell..... 9,326

Total to count for Vallandigham..... 9,306

Leaves Campbell's majority..... 20

But there are four votes for Campbell, those of—

Amos Higgins,	B. F. Gump,
R. Thomas,	Samuel Neas,



In regard to which the proof is not clear.

Give the contestant the benefit of all these, and deduct them..... 4

And a majority would still remain for Lewis D. Campbell, the sitting member, of..... 16

OHIO CONTESTED ELECTION.

Reply by the contestant to certain points made before the Committee of Elections, by the counsel for the returned member, February 27, 1858.

I.—*As to the sufficiency of the notice of contest.*

The specific objection urged is, that the names of the *illegal voters* are not set forth.

I answer, that even prior to the act of 1851, in a majority of cases, this had not been required; that the act is silent upon the subject, substituting a provision that ten days' notice of the names of the *witnesses* proposed for examination shall be given; that the language of the act is "specify particularly the *grounds* upon which he relies in the contest;" that *grounds* are one thing, and *names* of voters quite another; that every "ground" of illegality, known to the Ohio constitution and statutes relating to elections, is set forth, and cases under nearly all of them established by the testimony, and that there are many obvious reasons against requiring the names of illegal voters to be set forth in the notice of contest, or the answer; and among them this: That as the notice and answer cannot be renewed or amended, the parties would be precluded from proof of any illegal votes discovered after the thirty days limited in either case.

I answer, further, that the returned member himself has not, in his answer, set forth the name of so much even as one illegal voter.

As to precedents, fifteen cases, including those of the present session, have arisen under the law; nine of which, excluding the one now in hearing, were contested upon the ground of illegal voting, and yet in *not one* have the names of the illegal voters been set forth. Twice the objection has been directly made and overruled. In the very first case under the act, *Wright vs. Fuller*, 1851-'52, it was so held, (House Report, No. 136;) and yet again in *Otero vs. Gallegos*, 1855-'56. Objection in this case had been taken, in the answer of the returned delegate, to the omission of the names of the illegal voters. Yet the committee said: "The notice was quite sufficient to authorize the taking of the testimony. No such objection was made by the sitting member or his counsel at the time of taking the depositions; on the contrary, he appeared and cross-examined the witnesses without any objection whatever; and if he had no notice at all, but had appeared and cross-examined, he would have been estopped from setting up the want of notice."—(House Reports, 1855-'56, vol. 1, No. 90, p. 2.) Three times, also, it has been urged in contested elections in Philadelphia; *Lelar's case*, 1846; *Kneas' case*, 1851; *Cassidy's case*, 1857; and each time overruled by the court.

If there be any, the remotest resemblance between the notice in this contest and the one in *Archer vs. Allen*, in the last Congress, it might be an ingenious though perplexing intellectual exercise to point it out; yet even that notice the majority of the committee held sufficient.

II.—*As to the validity of the election in the second ward, Dayton.*

I leave this upon the argument heretofore submitted, adding the

case of *Otero vs. Gallegos*, just cited, wherein the prior congressional precedents are referred to and approved.

I remark also as to the case so strongly relied on by the counsel for the returned member, *The People vs. Cook*, 14 Barbour's Reports, 245 :

1. That that was not an ordinary contested election, but a proceeding in *quo warranto* known to the common law, the parties upon the record being the *State* and the incumbent ; and it is expressly said by one of the judges (p. 326) that "the result of an election, when controverted *in court*, is like a judgment sued upon. *We have no power* to reverse it for errors in conducting it, and thus give those concerned in it a re-trial." If this be the doctrine in contested elections before Congress, it is time, after the lapse of seventy years, that it should begin to be known and acted on. It is contradicted by every precedent from 1789 to this day.

2. There is a broad distinction, wholly overlooked by the court, between the want of authority on the part of an inspector of elections to act as such, and a mere irregularity by him in conducting it. Yet the omission to take the oath of office has always, in Congress, been held a fatal defect. The objection made in the case from Barbour was to the *form* only of the oath. It was an *apex juris* not fit to be urged ; for if a Jew be sworn on the Gospels, and testify falsely, he may be convicted of perjury.—(1 Greenleaf Ev., § 371.)

But the case is chiefly remarkable for a most extraordinary misapplication or perversion of the rule that the acts of an officer *de facto* are good and valid as regards the public and third persons. It may, indeed, be sound and pertinent in proceedings on *quo warranto*, but never, never in an ordinary contested election before a legislative tribunal ; otherwise, every intruder into the responsible office of inspector of elections would become invested at once with authority which could not be questioned elsewhere. By violence alone, and that at once and at the polls, could the remedy be applied and the intruder ousted. If this is to be the doctrine in cases like this, then, in a little while, at every hustings, the only struggle will be to secure at the outset, and by force or fraud, the judges of election ; and in such a conflict, not the will of the people, but the strength or cunning of the party first upon the ground, must prevail.

III.—*As to the non-production of the poll-books, or certified copies of them, to prove that the alleged illegal voter did vote.*

I answer, first: That the poll-books may be the best evidence to prove that a name corresponding with that of the person challenged is upon the list of voters ; but they do *not* prove that that identical person voted. Suppose the name of John Smith to be found upon them, and it is proved that a John Smith living within the same precinct or township was not entitled to vote ; *non-sequitur*, that the John Smiths are the same. There must be in every case some parol proof, therefore, that the person challenged did vote. The production of the list is, at best, but *corroborative* or cumulative evidence. The testimony of John Smith that he did vote, is better evidence of the fact than the production of a list containing the name of one John Smith.

It is said that the law requires the list to be kept, and that, therefore, the fact can be proved only by the production of the record. *Non-sequitur*, again, the fact is still "did the John Smith, who is challenged, vote at the election," and not "is the name of one John Smith upon the list of voters?" And, accordingly, it has been repeatedly held that where registers of marriage, birth, death, and the like, are required by the law to be kept, it is not necessary, nor even sufficient, to produce them even in a criminal prosecution.—(1 Greenleaf Ev., § 86; 9 Mass., 493; 11 Mass., 92; 3 Har. & McH., 393; Rus. & Ry., 109.) So, also, that a man was elected to and holds a certain office may be proved by parol; and I concede that the fact that, if no name corresponding to that of the person alleged to have voted appears upon the poll-list, it is presumption evidence that no such person did vote.

2d. As to the congressional precedents, the point has never been made or decided, so far as I have been able to find, and the usage has not been uniform. Proof upon this point, such as is produced here, was repeatedly received in the Broad Seal case, as in the instance of the vote of Ezekiel Patterson, a colored person. "Jacob W. Davis, a witness, sworn on the part of John B. Aycrigg and others, saith: I am clerk for the township of Mansfield, and was in 1838; I have the poll-list here; the names of Isaac N. Zerwilliger, Charles T. Poole, James Wamely, William V. Schureman, and Christopher Patterson, usually called Eke, (on the assessor's duplicate it is Ezekiel,) are on the poll-list."—(3 House Rep., 1839, 1840, No. 541, p. 95; and see the Report, *passim*.) And as to *declarations* of a person that he had voted, the poll-list not being produced, and no proof of its contents given, and *no other* evidence of the fact of voting, except his own declarations proved by third persons.—(See p. 73 of Report, and 23 of the Journal of the Committee.)

As to the only precedent cited by the counsel, *Otero vs. Gallegos*, poll-books were produced from only three counties. From six counties there were none introduced, and yet a part of the testimony related to illegal votes cast in those counties.

IV.—*That the abstract of votes in the district at the election, or copy of the returns, was not "obtained or taken" within the sixty days limited.*

I answer, 1st, that it is at least doubtful whether it be my place to produce it at all. It is no part of my case. I claim nothing under it. Upon its face it shows nineteen majority against me, and by so much would diminish my vote as it appears upon the testimony. In the first case under the law, *Wright vs. Fuller*, 1851, it appears from the report of the committee that it was the *sitting member* who produced the returns before them.—(House Report No. 136, page 1; and see *Munroe vs. Jackson*, House report, volume 2, page 403.)

But what is the true construction of the act of 1851? I maintain that the restriction in the ninth section applies solely to *oral testimony*. I argue this, 1st, *from the language* of the restriction: "No *testimony* shall be taken after sixty days," &c. Testimony means the declaration or affirmation, under oath, of a living witness.—(Webster's Dict.; 2 Bowner's Law Dict.; 2 Bunill's Law Dict.; 1 Greenleaf Ev., § 1, 307, 308; 2 Daniel Chy. Prac., 1003, 1030.) The distinction is not

between testimony and evidence, but between testimony and documentary evidence. 2d. *From the context.* The entire act, except the first and second sections, refers exclusively to the examination of witnesses. The eighth section provides for the production of documentary evidence *in connexion* with the testimony of witnesses. Examples of this may be found on pages 53 and 59 of the printed testimony. So, too, under the act of January 23, 1798, of which the statute of 1851 is but almost a literal transcript, the House, by resolution on the 5th of the June following, provided for the introduction of documentary evidence during that Congress, as a matter not included within the law. —(Journal, page 323; and Cont. Elec., 16.) 3. *From the object of the act.* Judge Strong, the author, or at least reporter of the bill, said, during the debate upon it: "*The testimony is wholly that of witnesses.*" —(Cong. Globe, 1850-'51, page 109.) 4. *By analogy to the chancery practices.* There, although no testimony can be taken after "publication," yet documentary evidence, even when a witness is to be examined along with it, may be introduced at the hearing.

Upon the precedents in Congress, since the law and prior to the present session, the question is plain. In only two cases has the "abstract" been procured or taken within the sixty days. In one case it was before the service of the answer. In five, including *Archer vs. Allen*, it was months subsequent to the expiration of the time limited for "taking testimony." In one of these five, *Clarke vs. Hall*, no notice of contest was served, other than the memorial of the contestant, nearly eighteen months after the election; yet the committee of the last Congress received and considered the documentary evidence procured in the cases. So, too, in another, *Millikin vs. Fuller*, the notice was not served till near thirteen months after the election; yet the same kind of evidence was received and acted upon by the same committee. And in the contested election for sheriff in one of the counties of this same third district, in 1856-'57, the book of returns was brought into court and received on the third day of the hearing, although the time for "taking testimony" had expired more than two months previously. And, in addition to all this, the returned member himself evidently so construed the law as to admit of the production of documentary evidence at any time; for, although in his answer he claims under the governor's *certificate*, he did not put it in evidence during the time limited, and in the answer expressly proposes to confine his proof during that period to matters provable by witnesses.

If this "abstract" could be established only by witnesses, then there might be more plausibility in the objection. But coming authenticated by the great seal of the State of Ohio, it proves itself upon production.—(1 Greenl. Ev., §4, 479, 489; 4 Dal. Rep., 416.)

The secretary of state is the proper person, and is authorized to make the copy here produced.—(Swan's Statutes of Ohio, 345, §§ 36, 37, 38, 39; 867, § 1; and 361, § 1.)

V.—As to the admissibility of evidence called "*hearsay*."

The importance of the question in all cases, but especially where

the election is by ballot, rather than its bearing upon this particular contest, demands for it a full consideration.

I remark, however, 1. That much of what is included by the returned member's counsel within the term is not hearsay, but original evidence. 2. That a part of this hearsay—for example, that relating to residence—is such as is continually received by courts in ordinary litigation.—(5 Harris & J., 97 ; 2 Bing., 104.) Declarations made at the polls, whether under oath or not, are also clearly within this proposition as part of the *res gestæ*. 3. That both parties offer the same kind of testimony in this regard. 4. That it is not the *adequacy*, but the *admissibility*, of the evidence which is in question.

But to the main point:

This is not the first time this question has been presented in legislative bodies ; and had it been tested by the principles and precedents which have prevailed there, I should have added nothing to the argument heretofore submitted. It has not been so argued, but upon rules and precedents known only to forensic courts, where a like case never did and never can arise in the exercise of its ordinary jurisdiction. I propose to meet the argument, *first*, upon this very ground, and to discuss it just as I would had the case arisen now for the first time in the usual course of litigation in a court of common law.

All evidence to be admissible must be *relevant*—that is, tend to prove or disprove the issue. All relevant evidence is *prima facie* admissible ; its rejection is always the exception. Thus, whenever a court is equally divided, the objection to evidence fails.

Among the exceptions is a class denominated “hearsay,” which is always heard in the ordinary affairs of life, but which, in judicial proceedings, is rejected.

Upon this rule excluding hearsay evidence, the returned member's counsel relies. I rest upon the exceptions, of which there is a vast number ; none, indeed, of course, presenting the exact question here ; but this is solely because it never arose or could arise in ordinary litigation.

What would have been the decision had it so arisen, may readily be inferred from a summary of the numerous cases constituting exceptions, adjudicated in a long series of years, as each several exigency arose.

These exceptions are founded primarily upon the doctrine that “all rules of evidence are adopted for practical purposes in the administration of justice, and must be so applied as to promote the ends for which they were designed.”—(1 Greenleaf Ev., § 83.)

Hearsay consists *strictly* of the declarations of persons not parties to the controversy. Admissions by the parties are *substitutory* evidence.—(*Ibid.*, § 169.)

Now, assuming, what is not true in any legal sense, that the parties to this controverted election are the returned member and myself, no others having an interest in it, I proceed to consider the exceptions, begging again that it shall be remembered that I apply and argue from them solely by analogy.

Some of them are regarded by Greenleaf rather as original evidence,

though usually treated as hearsay. It is not necessary here to distinguish between them.

In actions for malicious prosecution, and in cases of agency and trusts, the information upon which the party acted, though from third persons, is admissible. So, also, are letters and conversations of strangers to the record, where sanity is the question. And evidence of general reputation, reputed ownership, public rumor, general notoriety, is considered within the exceptions.—(*Ibid.*, § 101.) Expressions of bodily or mental feeling are admitted, and it is left to the court or jury to determine whether they were real or feigned. Thus, in trial for criminal intercourse, the correspondence and conversations of the husband and wife with third persons are received. So, also, are representations by a sick person, of the nature, symptoms and effects of his malady.—(*Ibid.*, § 102.) And not only is general repute in a family receivable in all questions of pedigree, including, also, birth, marriage and death, but the declarations of a single member of the family are admitted; and more than this, even *hearsay upon hearsay*. Thus the declarations of a deceased lady, as to the declarations made to her by her husband, were received in *Doe vs. Randall*, 2 M. & P., 20; and see also 2 Russ. & My., 165; Bull, N. P., 295; 1 Pet. Rep., 328, 337.

Inscriptions upon rings, family portraits, tomb-stones, and other funeral monuments, and charts of pedigree, are also admitted, and some of them provable even by *copies*; courts acting here upon the common sense principle, that when a fact *cannot* be proved in one way, it *may* be proved in another.—(*Ibid.*, § 105.)

Again: entries, in many cases, made by third persons are evidence of the facts set down in the entry; and this, whether made in the course of official or professional employment, or as mere private memoranda. And Greenleaf lays it down broadly that, "generally contemporaneous entries made by third persons in their own books, in the ordinary course of business, the matter being within the peculiar knowledge of the party making the entry, and there being no apparent or particular motive to pervert the fact, are received as *original evidence*," and this though the party be living and present as a witness, and not himself remembering the fact.—(*Ibid.*, § 116.)

Again: in matters of public interest, though confined to a particular district, parish, or neighborhood, the declarations of persons not parties to the suit are receivable in evidence, upon the principle that they "are the natural effusions of a party who must know the truth, and who speaks upon an occasion when his mind stands in an even position, without any temptation to exceed or fall short of the truth."—(Lord Eldon, 13 Vesey, 514.)

In questions of boundary, therefore, hearsay is admitted. The language of Chief Justice HENDERSON, of North Carolina, in *Sasser vs. Herring*, (3 Dever Law Rep., 340,) is strong and pertinent here: "We have, in questions of boundary, given to the single declaration of a deceased individual, as to a line or corner, the weight of common reputation, and permitted such declarations to be proven, under the rule that, in questions of boundary, hearsay is evidence. * * * From necessity, we have, in this instance, sacrificed the principles upon which the rules of evidence are founded." The same doctrine

is held in New Hampshire, Connecticut, Pennsylvania, South Carolina, Kentucky, and Tennessee.—(1 Greenl. Ev., § 145, note 1.)

A very large class of exceptions is included under the head of *declarations against interest*, made by strangers to the litigation. They are admitted when it is shown that the declarant is dead, and therefore cannot speak; that he possessed a competent knowledge of the facts, and that the declarations were at variance with his interest. "When these circumstances concur," says Greenleaf, (§147,) "the evidence is received, leaving its weight and value to be determined by other considerations." This exception extends to declarations of any kind, whether oral or in writing, (Ibid., §150;) it includes within it other statements, made at the same time, though not against interest, (§152;) it is not necessary that the declarant, if living, should have been competent (or compellable) to testify to the facts, since it is regarded as a *confession*, (§153;) it extends in favor of the successor, or party in the same interest, of a deceased rector or vicar, or corporation aggregate, (§155;) and it is not necessary that the fact should have been stated on the personal knowledge of the declarant, nor is it material whether it is provable by other testimony, (§153.)

Dying declarations also are receivable; the solemnity of the occasion being deemed to stand in the place of an oath and cross-examination.

Again: where other proof is made that a voter cast his ballot for a particular candidate, there is another technical but well settled rule under which his declarations are receivable as against that candidate. The office, in the point of view in which I am now treating it, being one of profit as well as trust in a legal sense, is an individual right; it is, in some sense, individual property, but a right or property derived from those who voted at the election. The returned member claims under each and every one who voted for him; and the contestant, in like manner, under those who voted for him. Hence the declarations of every voter are admissible against the party for whom he voted, since the right of the party to the office depends upon the right of the voter to confer it.—(3 John. R., 449; 1 Greenl. Ev., §180.)

There is yet another class of declarations—those made by bankrupts—which are admitted *in favor* of the assignees against creditors. A strong case is *Ridley et al. vs. Gyde*, (9 Bing. Rep., 349,) where declarations made by White, the bankrupt, not a party to the record or in interest, a month after the act of bankruptcy, and without any intervening circumstances to connect them with it, were yet received by the English common pleas in 1832, Chief Justice Tindal, Park, and Bosanquet concurring. The chief justice said: "To shut out this conversation, would be to shut out the best evidence in the cause;" and Park, J., adhered to his decision, in *Rawson vs. Haigh*, (2 Bing., 104,) where he had said: "I am satisfied that declarations made during departure and absence are admissible in evidence to show the motive of the departure. It is impossible to tie down to time the rule as to declarations; we must judge from all the circumstances of the case."—(And see 1 Bing., 585; 1 Index to Eng. C. L. Reports, "Evidence.")

So, also, in settlement cases, declarations by parishioners as to mat-

ters of residence are held admissible in evidence, and that, too, without calling the party, though within the reach of process.—(1 M. and S., 637; and see especially *The King vs. Inhabitants of Hardwick*, 11 East. Rep., 588.)

Other examples, many in number, might be added; but enough have been summed up to show how often and in what a variety of cases courts, even of common law, have set aside the rule excluding hearsay.

It was to establish this proposition, and not because they are direct precedents or cases in point, for of such there are none in "the books," that I have cited these examples, reasoning from them by analogy.

But the *conditions* of the exception, admitting declarations by third persons against their interest, do, in the reasoning upon which they are founded, clearly include the testimony objected to in this case.

1. The declarant must have competent knowledge of the facts, otherwise he has no right to speak. This condition is fulfilled here. 2. He must be dead. Why? Because, if alive, he ought to speak. But in this case he has a constitutional right to be silent, and cannot be compelled to speak, either, first, as to his vote, since it is by ballot; or second, as to his qualifications, since he might subject himself to a criminal prosecution. 3. The declarations must have been at variance with his interest. Now, it is true that in courts, by analogy to the now generally exploded rule disqualifying a witness because of interest in the suit, the interest in cases within this exception must usually be pecuniary, although Greenleaf seems to recognize also that danger of punishment may be a fitting element in it.—(\$150, *note*; and see 24 E. C. L. Rep. 467.) But upon what principle of human nature is this condition of the rule founded? *That all men are eager to increase and slow so diminish their estate.* And yet how much more eager are they to retain their political rights and personal liberty. Now, in the testimony, here are two classes of declarations: first, as to the qualifications; second, as to the person for whom the declarant voted. The latter are not within the rule unless made at the same time as the former. The former are within it; and this for two reasons: 1. Whether made before or after the election, they equally are admissible against him in a criminal prosecution for illegal voting, which in Ohio, is a penitentiary offence. 2. If *before* the election, they also subject the declarant to danger of loss of his vote, since, by statute in Ohio, witnesses may be examined at the polls, and thus the declaration of the party be there given in evidence against his right to vote.

Here, then, is the highest interest of the voter against the declaration—loss of liberty, infamous punishment, loss of suffrage. Shall one pennyworth of pecuniary interest suffice to render the declaration admissible; and yet these momentous considerations, involving the most valuable rights of the citizen, be reckoned but as the small dust of the balance?

But whether within the special conditions of the exception or not, these declarations, both as to qualifications and vote, but particularly the former, are emphatically within the *broad principle* upon which the exception itself is founded. What is it? "*The extreme improbability of their falsehood.*"—(1 Greenleaf Ev., § 148.) And this improbability, says the author, is strengthened by the circumstance that "it is always

competent for the party against whom such declarations are adduced *to point out any sinister motive* for making them." "It is true," he adds, "that the ordinary and highest tests of the fidelity, accuracy and completeness of judicial evidence are here wanting; but their place is in some measure supplied by the circumstances of the declarant; and the *inconveniences resulting from the exclusion* of the evidence having such guaranties for its accuracy in fact, and for its freedom from fraud, are deemed *much greater*, in general, than any which would probably be experienced from its admission." For similar reasons, doubtless, it was that in *Powell vs. Harter*, (24 E. C. L. Rep., 467,) an action for libel upon a charge of receiving stolen goods, knowing them to have been stolen, upon justification pleaded, the court allowed the declarations of the alleged thief to be given in evidence by the defendant to prove that he (the thief) had stolen the goods received by the plaintiff. And see also *Doe & Davy vs. Haddon*, (3 Doug. Rep. 310.)

There is yet another principle yet recognized by the common law, upon which the declarations here objected to are admissible—*necessity*. On this principle, in part, some of the hearsay which I have already considered, is admitted to prevent a failure of justice. In like manner the testimony of the wife in proceedings to keep the peace, or for assault and battery upon herself, instituted by her against the husband, is received, and thus one of the earliest, firmest, and most sacred rules of evidence—a rule not even yet swept away by the relentless hand of modern reform—is so far relaxed. So, also, the contents of a trunk lost by a common carrier may be proved by the owner.—(1 Greenleaf Rep. 27.) And in Ohio and Pennsylvania the *wife* of the owner is received as a competent witness for that purpose.—(20 Ohio Rep. 318; 8 Serg. & Watts, 369; 3 Barr, 351.) In many other cases, also, upon this principle of necessity, persons excluded by the general rules of evidence are yet admitted to testify.

Apply the principle here, and, first, as to declarations concerning disqualifications.

Upon this point it is enough to say that, besides the difficulty, sufficiently great just after an election, and increasing continually the longer the delay in taking the testimony, of securing the attendance of voters challenged as illegal, none of them of any class can be compelled to testify, even if present and on oath, as to their disqualification, because they might thereby criminate themselves. This protection extends to every question the answer to which might *tend* to convict them of having voted illegally.

To exclude the declarations of voters in any case would, therefore, tend greatly to embarrass the rights of both parties and of all concerned.

2. This necessity applies with especial force to the declarations of the voter as to the person for whom he voted; because that is a fact which he cannot be compelled to disclose where the election is by ballot. This has been repeatedly decided. I refer especially to *Easton vs. Scott*, 1816, Cont. Elects. 272, 276; the *Broad Seal* case, 1840; *Farlee vs. Runk*, 1845-'46; *Monroe vs. Jackson*, 1847-'48; and the case of *H. R. Kneas*, district attorney, whose election was contested in

1851, on behalf of *William B. Reed*, in one of the judicial courts of Philadelphia.

This, then, is a constitutional right of the voter; but there is also another high constitutional right, pertaining not to one man only, but to thousands—the right to see that the purity and integrity of the elective franchise shall be preserved by a *contest* before the appropriate tribunal. It is a private right; it is much more, a public right. And of what value is the vote by ballot, if the purity of the ballot-box be not made sure?

How, then, shall these two conflicting rights both be maintained? Only by permitting the voter to withhold his own testimony, and allowing the fact in dispute to be established by other proof.

It has, indeed, been doubted whether the constitutional right of secret ballot be not infringed by admitting *any testimony* to prove the fact. So it would seem to have been held by the Committee of Elections, in *Easton vs. Scott*; but the House, on motion by Mr. Webster, and after a long debate, in which the contrary doctrine appears to have been maintained by Randolph, Webster, and Calhoun, re-committed the report, with instructions to consider the testimony presented by the parties upon that point. And see *Otero vs. Gallegos, ut supra*.

The same objection was urged also in the Philadelphia contested election of 1851, just cited; and, in deciding it, Judge KING said: "What is the object here? It is important to prove how a given individual voted. How is it to be proved? First, undoubtedly, if he chooses to waive the protection given by the constitution he may state it himself. But supposing it became of vital importance to prove how he voted, cannot that be established by clear and satisfactory testimony? He may have an interest in protecting his ballot; another may have an interest in showing what that ballot was. We are to preserve his rights by protecting him in the secrecy the law contemplates; but we are equally bound to serve the general community, or the individual, by enabling him to prove it. Where we resort to other testimony than the party himself, we go upon the principle of obtaining the best testimony the nature of the case will admit. * * * * *

In adopting this course, I don't understand myself as infringing upon the right of the citizen or the security of the secret ballot."—(*Report*, p. 17.)

It has always been conceded, however, that the voter may waive his right and give evidence; but surely, if his own voluntary testimony can be received because it is a waiver of his right, the next best and least objectionable testimony, and upon the same principle, is his declarations. And I here remark, also, that if, as is claimed, all evidence except his own, which cannot be compelled, is *secondary*, then, as there are no degrees in secondary evidence, why, I ask, may not his declarations be received?

And at this point I quote also from the opinion of the court in the case of *LEWIS C. CASSIDY*, district attorney, whose election was contested in Philadelphia, in 1857. Objection was made to certain evidence upon the ground that it "amounted to *nothing more than hearsay*," and that "to admit the evidence of the witness would tend to allow him to *prove admissions* of parties who might have been legal

voters, yet subsequent to the election might have declared, from motives better known to themselves, that they did not vote at all, or were not qualified voters." Judge THOMPSON, overruling the objection, said, "that the question was very simple—that to comply with the notions of counsel would be to require of the contestants an absolute impossibility. It is alledged by the contestants that fraudulent votes were polled; and it is contended that the fact can be shown in no other way than by proving it by the persons themselves who perpetrated the fraud. Now, to compel him to prove this by them would effectually put a stop to the investigation. But the law does no such thing."—(*Report*, p. 33.)

If it be said that the voter ought himself to be first summoned, so that it may be seen whether he will not waive his privilege to be silent, I answer, that wherever a witness cannot be compelled to testify, the party is under no obligation to call him. It was expressly so decided by the Supreme Court of the United States in *Reyburn's* case; 6 Peters, Rep. 352, 367. Judge Thompson, delivering the unanimous opinion of the court, said: "A subpoena to compel attendance as a witness would have availed nothing, and the law does not require the performance of an act perfectly nugatory. But suppose Chase (the witness) had been within reach of a subpoena, and had actually attended the court, he could not have been compelled to produce the commission, and thereby furnish evidence against himself."

The same doctrine prevails in settlement cases also, where it is held "not necessary first to call the inhabitant (of the parish) and show that he refuses to be examined, in order to admit his declarations;" 1 M. & S., 637; 10 East., 395; Greenl. ev., §153, 175.

So far I have argued this case as I would have argued had it arisen for the first time in the course of ordinary litigation in a court of common law, the only parties to it being the returned member and myself. Even there, with great confidence, I affirm that the evidence would be received as a new application merely of very ancient doctrines.

But I now submit that this question is not to be decided upon the strict common law rules of evidence applied in private litigation; that the real parties to this contest are the people, or certainly the electors of the district; and that the parliamentary, congressional, and legislative precedents, for a great number of years, are clear and uniform in favor of the admissibility of this evidence. But I leave all this upon the oral and written arguments heretofore submitted upon this subject to the committee.

CLEM'T L. VALLANDIGHAM.

WASHINGTON, D. C.,
February 27, 1858.

JOHN ROBB.

[To accompany Bill S. C. C. 184.]

MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 184, "for the relief of John Robb," have had the same under consideration, and beg leave to report:

That they have had the same case before them in another shape, and, after mature consideration, reported it favorably. The principles involved are identical with those in the Asbury Dickins case, and are fully set forth in the report your committee submitted in that case. Your committee, therefore, report back the Senate bill without amendment, and recommend its passage.

MICHAEL NOURSE.

[To accompany Bill H. R. C. C. No. 8.]

MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Michael Nourse, together with the bill accompanying it, have had the same under consideration, and now beg leave to report :

That this case involves the same question with that of Asbury Dickens, just reported, and your committee, therefore, on the same grounds, now report the accompanying bill, as a substitute for that from the Court of Claims, and recommend its passage.

34TH CONGRESS, 1st SESSION.—HOUSE OF REPRESENTATIVES.—REPORT C. C. No. 17..

MICHAEL NOURSE.

[To accompany Bill H. R. C. C. No. 8.]

MAY 16, 1856.—Referred to the Committee of Claims.

MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following report :

MICHAEL NOURSE vs. THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report in the case of Michael Nourse vs. The United States :

1. The petition of the claimant to the Court of Claims.
2. Claimant's petition to Congress, with accompanying documents, referred to the Court of Claims by the House of Representatives, and returned to that House.
3. Statement showing the number of days the claimant acted as Register of the Treasury, transmitted to the House of Representatives.
4. Opinion of the court in this case.

5. Opinion of the court in the case of Asbury Dickins *vs.* The United States.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this 7th day of May, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims :

The petition of Michael Nourse respectfully sheweth : That prior to the 3d March, 1849, your petitioner being then chief clerk in the office of the Register of the Treasury, at several different periods was appointed Acting Register of the Treasury by the Presidents of the United States.

These appointments were made under the authority of the eighth section of the act of 8th May, 1792, entitled " An act making alterations in the Treasury and War Departments."—(Stat. at Large, vol. 1, page 281.)

Your petitioner exhibits herewith the certificate of Mr. Hunter, Assistant Secretary of State, to show the date of his several commissions, and by whom the appointments were made ; and the certificate of Finley Bigger, Register of the Treasury, to show the performance of the service under the several commissions.

The aggregate service prior to the 3d March, 1849, was three hundred and forty-four days. This, at the rate of \$3,000 per annum, (the salary of the Register,) amounts to \$2,827 32. During the same time, your petitioner received his salary as chief clerk, amounting to \$1,622 19.

Your petitioner presented his claim to the Senate, first session of the thirty-third Congress ; a favorable report (No. 197) was made, and a bill for his relief passed the Senate, and in the House of Representatives was referred to the Committee of Claims. That committee reported unfavorably. The report was not acted upon in the House.

Your petitioner is advised there is justly due him from the United States compensation for these services ; and he prays the judgment of this court, therefore.

Your petitioner is the sole owner of his claim, not having assigned it to any one else.

MICHAEL NOURSE.

DISTRICT OF COLUMBIA, }
Washington County. }

Personally appeared before me, a justice of the peace in and for the county aforesaid, Michael Nourse, who made oath, according to law, that the facts stated in the annexed petition are true, to the best of his knowledge and belief.

PAUL STEVENS,
Justice of the Peace.

JULY 17, 1855.

To the honorable the Senate and House of Representatives of the United States :

The memorial of Michael Nourse respectfully sheweth : That during the last twenty-four years, while acting as chief clerk in the office of the Register of the Treasury, he was occasionally appointed by the President to take charge of the office and perform the duties of Register, which he accordingly did ; that at two periods he held the appointment of Register *ad interim*, and the salary of Register was paid to him ; at all other times he received only the salary of \$1,700 as chief clerk.—(See Paper A.)

And your memorialist further shows, that during the same period he acted, also, by appointment from the Secretary of the Treasury, at his own risk and responsibility, as disbursing agent to the amount exhibited in Paper B.

For these several services he asks a reasonable compensation, which he is encouraged to hope will be readily granted, in consideration of the fact that officers of the government have, probably without exception, when filling two offices, received the larger salary ; and also because clerks now at a salary of \$1,800 are allowed \$200 per annum as disbursing agents whenever so employed in the executive departments of the government, as authorized by the act of Congress of March 3, 1853.

All which is respectfully submitted.

MICHAEL NOURSE.

WASHINGTON, *December 29, 1853.*

A.

Statement showing the time of service of Michael Nourse as Acting Register of the Treasury.

Extracts from the records of temporary commissions granted by the President of the United States, kept at the State Department.			Period of service, and number of days employed, as shown by the records of the Register of the Treasury.	
By whom granted.	Date.	Page of record.	Period of service.	No. of days.
President Jackson ..	Feb. 16, 1830	78	From Feb. 16 to Feb. 25....	10
Do.....	April 17, 1830	88	April 17 to May 1....	14
Do.....	July 18, 1832	112	July 18 to Aug. 16....	30
Do.....	Dec. 13, 1832	113	Dec. 31 to Jan. 11....	12
Do.....	May 2, 1833	118	May 2 to May 5....	4
Do.....	June 30, 1833	122	June 30 to June 31....	2
Do.....	Oct. 12, 1833	130	Oct. 12 to Oct. 15....	4
Do.....	July 17, 1834	134	July 7 to Sept. 30....	86
Do.....	Sept. 23, 1835	151	Sept. 23 to Sept. 29....	7
Do.....	April 20, 1836	154	April 20 to May 14....	25
Do.....	June 3, 1836	156	June 3 to Aug. 10....	69

STATEMENT—Continued.

Extracts from the records of temporary commissions granted by the President of the United States, kept at the State Department.			Period of service, and number of days employed, as shown by the records of the Register of the Treasury.	
By whom granted.	Date.	Page of record.	Period of service.	No. of days.
President Van Buren	April 21, 1837	168	From April 21 to May 20....	30
Do.....	June 3, 1837	174	June 3 to June 13....	11
Do.....	Aug. 29, 1837	177	Aug. 29 to Sept. 2....	5
Do.....	July 17, 1839	193	July 17 to Aug. 9....	23
Do.....	May 7, 1840	206	May 7 to May 12....	6
Do.....	Sept. 21, 1840	210	Sept. 21 to Oct. 17....	27
Do.....	Oct. 26, 1840	210	Oct. 26 to Oct. 30....	5
President Tyler	May 17, 1841	214	May 17 to May 18....	2
Do.....	June 30, 1841	214	June 30 to July 2....	2
Do.....	Aug. 11, 1841	214	Aug. 11 to Aug. 13....	3
Do.....	Sept. 16, 1842	218	Sept. 16 to Sept. 30....	14
Do.....	Oct. 9, 1842	220	Oct. 9 to Oct. 16....	8
Do.....	Oct. 26, 1842	224	Oct. 26 to Nov. 2....	7
President Polk	Sept. 18, 1845	227	Sept. 18 to Sept. 26....	9
Do.....	April 29, 1846	228	April 29 to May 1....	3
Do.....	Aug. 12, 1846	229	Aug. 12 to Sept. 4....	23
Do.....	May 7, 1847	231	May 7 to May 12....	6
President Taylor	March 6, 1849	236	Mar. 6 to April 9....	35*
Do.....	July 18, 1849	236	July 18 to July 21....	4
Do.....	Jan. 17, 1849	237	Jan. 17 to Feb. 12....	27*
Do.....	Mar. 25, 1850	237	Mar. 25 to April 10....	17
President Fillmore	Oct. 4, 1850	240	Oct. 4 to Oct. 17....	13
Do.....	Dec. 6, 1850	241	Dec. 6 to Dec. 13....	7
Do.....	Feb. 27, 1851	242	Feb. 27 to Mar. 20....	22
Do.....	April 14, 1851	243	April 14 to April 26....	13
Do.....	July 9, 1851	245	July 9 to July 11....	3
Do.....	July 23, 1851	246	July 23 to Aug. 29....	38
Do.....	Oct. 8, 1851	249	Oct. 8 to Oct. 16....	9
Do.....	Oct. 30, 1851	249	Oct. 30 to Nov. 1....	3
Do.....	March 3, 1852	252	Mar. 3 to Mar. 9....	7
Do.....	July 28, 1852	256	July 28 to Aug. 24....	28
Do.....	Oct. 11, 1852	259	Oct. 11 to Oct. 17....	7
Do.....	Nov. 2, 1852	259	Nov. 2 to Nov. 6....	6
				686
From which deduct 62 days as Register <i>ad interim</i> , for which Michael Nourse received pay as Register.....				62
Number of days during which he acted as Register, and received the salary of chief clerk				624

Difference between the salary as Register and that of chief clerk, for 624 days, is \$2,222 58, to wit:

Register's salary.....	\$5, 128 76
Chief clerk's salary	2, 906 18
	<u>2, 222 58</u>

* Received salary as Register.

IN THE SENATE OF THE UNITED STATES—*April 5, 1854.*

Mr. WADE made the following report:

The Committee on Claims, to whom was referred the petition of Michael Nourse, report:

It is represented that during the period from 1830 to 1853 the memorialist held the office of chief clerk in the office of the Register of the Treasury, at a salary of \$1,700 per annum; that at sundry times he was commissioned by the President to act temporarily as Register of the Treasury, which duty he performed for periods varying from two to three days to several weeks at a time, amounting in all to 624 days, and for which time he claims the difference between his salary as chief clerk, which he received, and the salary attached to the office of Register, viz: \$3,000 per annum, amounting to \$2,222. By the act of 1792, (U. S. Statutes at Large, vol. I., p. 28,) it is provided that, in case of the sickness or absence of the heads of departments or bureaus, "it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of said respective offices" until the absence, &c., shall cease. It will be observed that, although this act authorizes the temporary appointment and employment, it is silent in reference to the amount or manner of compensation. It is not to be presumed to have been the intention of Congress to authorize the President to require the service without intending that proper compensation should be made; and although in this case the duty was devolved upon a subordinate officer, who was already in the service and pay of the government, he does not appear to have received any compensation for the additional labor and responsibility which were devolved upon him by these appointments of the President.

The committee report the accompanying bill, allowing the petitioner to be paid for the services performed at the same rate allowed to the Register for the like services.

IN THE SENATE OF THE UNITED STATES—*April 5, 1854.*

Mr. WADE, from the Committee on Claims, submitted a report, (No. 197,) accompanied by the following bill; which was read and passed to a second reading:

A BILL for the relief of Michael Nourse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to account with, and allow to, Michael Nourse, late chief clerk in the office of the Register of the Treasury, for the time that he performed the duties of Register of the Treasury under temporary appointments by the President of the United States, the same

MICHAEL NOURSE.

compensation that was at the time allowed by law to the Register for those duties, to be paid out of any money in the treasury not otherwise appropriated, deducting therefrom the compensation received by said Nourse during said time as chief clerk.

IN THE HOUSE OF REPRESENTATIVES.

APRIL 12, 1854.—Referred to the Committee of Claims.

JULY 15, 1854.—Reported from the committee with a recommendation that it do not pass.
Committed to a Committee of the Whole House to-morrow.

AN ACT for the relief of Michael Nourse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to account with, and allow to, Michael Nourse, late chief clerk in the office of the Register of the Treasury, for the time that he performed the duties of Register of the Treasury, under temporary appointments by the President of the United States, the same compensation that was at the time allowed by law to the Register for those duties, to be paid out of any money in the treasury not otherwise appropriated, deducting therefrom the compensation received by said Nourse during said time as chief clerk.

Passed the Senate April 7, 1854.

Attest :

ASBURY DICKINS,
Secretary.

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Statement of moneys received and accounted for by Michael Neume, late disbursing agent in the office of the Register of the Treasury, from June 1, 1929, to April 28, 1953.

I hereby certify that the accounts of Michael Nourse, late disbursing agent for the above objects, have been closed, and that the balances due by him at the time of his going out of office were promptly repaid by him.

F. BIGGER, Register.

Statement showing days upon which warrants issued by the Secretary of the Treasury were signed by Michael Nourse, esq., as Acting Register, from February 16, 1830, to May 12, 1847, as appears from the warrants on file in the register's office.

Period of time.	No. of days.
February 16 to February 25, 1830, inclusive.....	10
April 17 to May 1, 1830, inclusive.....	15
July 18 to August 15, 1832, inclusive.....	29
December 31, 1832, to January 11, 1833, inclusive.....	12
May 2, 1833, to May 4, 1833, inclusive.....	3
June 30, 1833.....	1
October 12 to October 15, 1833, inclusive.....	4
July 7 to September 30, 1834, inclusive.....	54
September 23 to September 29, 1835 inclusive.....	7
April 20 to May 14, 1836, inclusive.....	25
July 21, to August 13, 1836, inclusive.....	23
April 21 to May 20, 1837, inclusive.....	30
June 5 to June 13, 1737, inclusive.....	9
September 1 to September 2, 1837, inclusive.....	2
August 7 to August 10, 1839, inclusive.....	4
May 7 to May 12, 1840, inclusive.....	6
October 5 to October 19, 1840, inclusive.....	15
October 26 to November 3, 1840, inclusive.....	9
May 17 to May 18, 1841, inclusive.....	2
June 30 to July 2, 1841, inclusive.....	3
August 11 to August 13, 1841, inclusive.....	3
September 19 to September 30, 1842, inclusive.....	12
May 3 to May 27, 1845, inclusive.....	25
September 19 to September 26, 1845, inclusive.....	8
April 29 to May 1, 1846, inclusive.....	3
August 12 to September 4, 1846 inclusive.....	24
May 7 to May 12, 1847, inclusive.....	6
	344

TREASURY DEPARTMENT, *Register's Office*, April 3, 1855.

F. BIGGER, *Register*.

MICHAEL NOURSE vs. THE UNITED STATES.

Opinion of the court, delivered by BLACKFORD, J.

The claimant claims compensation for his services as Acting Register of the Treasury at different times between the 16th of February, 1830, and May 12, 1847—both days inclusive.

The evidence shows that the claimant was regularly appointed Acting Register of the Treasury at various times between the dates aforesaid, and that he served in that office at various times between those dates, for three hundred and forty-four days. The claimant, during the times he served as Acting Register of the Treasury, was chief clerk in the office of the Register of the Treasury.

This case is the same in principle with that of *Dickins vs. The United States*, recently decided by this court. The decision in that case, relative to the validity of the petition, is hereto attached. It shows the reasons for our decision in the present case.

The Solicitor, in opposition to a part of this claim, relies on the act of 1839, 5 Stat. at Large, page 349, section 3, and the acts of 23d and 26th of August, 1842, 5 Stat. at Large, page 510, section 2, and page 525, section 12. But we do not think that these acts apply to this case. They do not contemplate a case where the same person holds two distinct offices at the same time, which is the present case.

We consider the claimant entitled, for his services as Acting Register of the Treasury, to the same compensation that was, at the times of his service, allowed by law to the Register of the Treasury—that is, at the rate of three thousand dollars a year. Such allowance is in accordance with the decision of the circuit court of the United States in the case of *the United States vs. White and others*, cited in our opinion in the case of *Dickins vs. The United States*.

Annexed to this opinion are documents marked A and B; one of which is the statement of W. Hunter, Assistant Secretary of State, and the other that of F. Bigger, Register of the Treasury. These documents prove the service of the claimant to have been rendered as aforesaid, for three hundred and forty-four days. The compensation due to him for that service, at the rate of three thousand dollars a year, is two thousand eight hundred and twenty-seven dollars and thirty-nine cents. Judgment is therefore hereby rendered for the claimant against the United States for the last named sum, and a bill for that amount is accordingly reported.

A BILL for the relief of Michael Nourse.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury pay to Michael Nourse the sum of two thousand eight hundred and twenty-seven dollars and thirty-nine cents, out of any money in the treasury not otherwise appropriated, as a compensation in full for his services as Acting Register of the Treasury at various times between the sixteenth of February, eighteen hundred and thirty, and the twelfth of May, eighteen hundred and forty-seven—both days inclusive.

ASBURY DICKINS vs. THE UNITED STATES.

The opinion of the court, delivered by Judge BLACKFORD :

This is a claim for compensation for services performed by the claimant as Acting Secretary of the Treasury at different periods between the 24th of April, 1829, and the 31st of May, 1833—both days inclusive. It is also a claim for compensation for services performed as Acting Secretary of State at different periods between the 10th of August, 1833, and the 9th of November, 1836—both days inclusive.

ceive for his services, as Acting Secretary of the Treasury and as Acting Secretary of State, the same compensation, for the time he acted, which the law then allowed to the Secretaries of the Treasury and of State, respectively.

The petition further states, that from the 21st of June to the 7th of August, 1831, the claimant received a compensation as Secretary of the Treasury, but that during that time he did not receive his salary as chief clerk. The circumstance here stated will be taken into consideration, when an account shall be taken from the evidence of the amount to which the claimant is entitled.

The Solicitor refers us to certain acts of Congress of 183 and 1842, (5 Stat. at Large, 349, 510, 525.) It is only necessary to observe, with respect to these acts, that they were not in force when the services now sued for were rendered.

Testimony is ordered to be taken in this case.

JOHN ROBB.

[To accompany Bill H. R. C. C. No. 5.]



MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of John Robb, together with the bill accompanying it, have had the same under consideration, and now beg leave to report:

That this case involves the same question with that of Asbury Dickins, just reported on, and your committee, therefore, on the same grounds, now report the accompanying bill, as a substitute for the bill from the Court of Claims, and recommend its passage.

34TH CONGRESS, 1ST SESSION.—HOUSE OF REPRESENTATIVES.—REPORT
C. C. No. 14.

JOHN ROBB.

[To accompany Bill H. R. C. C. No. 5.]

MAY 16, 1856.—Referred to the Committee of Claims.

MAY 23, 1856.—Ordered to be printed.

The COURT OF CLAIMS made the following

REPORT.

JOHN ROBB vs. THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report of the case of John Robb vs. The United States:

1. The petition of the claimant.
2. Certificate of the Secretary of State, showing the dates of the appointments of the claimant as Acting Secretary of War.

3. Certificate of the Secretary of the Treasury, showing how long the claimant so acted.

These two certificates are transmitted to the Senate.

4. Opinion of the court, with the opinion of the court in Asbury Dickins' case annexed ; with a bill for the claimant's relief.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the
[L. s.] seal of said Court, at Washington, this 7th day of May, A.
D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Judges of the Court of Claims :

The petition of John Robb respectfully sheweth : That your petitioner, at the time hereafter mentioned, being chief clerk of the War Department, was appointed and duly commissioned to act as Secretary of War, at the following dates, to wit : June 8, 1832, July 16, 1832, November 12, 1832, May 6, 1833, June 6, 1833, and September 26, 1833, and served, as well as he recollects, altogether about nine months, under the appointments at the different periods above stated.

Your petitioner further states, that he presented his claim for payment at the Treasury Department, for the services rendered as aforesaid, and that the First Auditor reported on the 10th August, 1849, the sum of two thousand seven hundred and eighty-one dollars and ninety-four cents, due from the United States to your petitioner for his salary as Acting Secretary of War, for various periods, during the years 1832 and 1833, but there was no further action upon the case by the Treasury Department. The exact period of time which your petitioner served as aforesaid appeared from an official statement from the War Department, which, with other papers that accompanied the First Auditor's report, were lost or mislaid, and your petitioner asks that an order of court be made, to obtain from the War Department an official statement of the length of time he was Acting Secretary of War.

Your petitioner, having performed the duties of Secretary of War, believes that he is justly entitled to the salary for the time he acted as such, upon principles of equity and precedents of the Treasury Department in similar cases ; and that he is the sole owner of the claim, and prays that a bill be reported to Congress for his relief.

JOHN ROBB.

J. S. EDWARD, }
A. H. LAWRENCE, } *For petitioner.*

DISTRICT OF COLUMBIA, }
 Washington County, } ss.

Personally appeared before me, a justice of the peace in and for said county, John Robb, who made oath that the foregoing petition contains the facts, according to his knowledge and belief.

Given under my hand, this 16th of July, 1855.

L. F. WHITNEY, JR.

JOHN ROBB vs. THE UNITED STATES.

Opinion of the court, delivered by BLACKFORD, J.:

This is a claim upon the United States for compensation for the services of the claimant as Acting Secretary of War, at different times, between the 8th of June, 1832, and the 9th of October, 1833—both days inclusive.

It appears by the evidence that the claimant was regularly appointed Acting Secretary of War, at various times in said years, as stated in his petition; and that he served in that office, in those years, for one hundred and seventy-five days. The petition states, that during the time those duties were performed the claimant was chief clerk in the War Department.

This case is the same in principle with that of *Dickins vs. The United States*, recently decided by this court. The decision in that case, relative to the validity of the petition, is hereto attached. It shows the reasons of our decision in the present case.

We consider the claimant entitled for his services, as Acting Secretary of War, to the same compensation that was, at the times of his service, allowed by law to the Secretary of War—that is, at the rate of six thousand dollars a year. Such allowance is in accordance with the decision of the circuit court of the United States in the case of the *United States vs. White* and others, cited in our opinion in the case of *Dickins vs. The United States*.

The account rendered by the claimant is as follows:

"The United States to John Robb, Dr., for services as Acting Secretary of War.

From 8th June, 1832, to 15th June, 1832, inclusive,	7 days.
16th July, 1832, to 6th Oct., 1832,	82 "
12th Nov., 1832, to 17th Nov., 1832,	5 "
6th May, 1833, to 8th May, 1833,	3 "
6th June, 1833, to 8th Aug., 1833,	64 "
26th Sept., 1833, to 9th Oct., 1833,	14 "

175 days.

At the rate of \$6,000 per annum, making \$2,876 73."

We consider that account to be proved by the evidence; and we therefore render judgment in favor of the claimant for the said sum of

two thousand eight hundred and seventy-six dollars and seventy-three cents. A bill for that sum is accordingly reported.

A BILL for the relief of John Robb.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury pay to John Robb the sum of two thousand eight hundred and seventy-six dollars and seventy-three cents, out of any money in the treasury not otherwise appropriated, as a compensation in full for his services as Acting Secretary of War, in the years eighteen hundred and thirty-two and eighteen hundred and thirty-three.

ASBURY DICKINS *vs.* THE UNITED STATES.

The opinion of the court, delivered by Judge BLACKFORD :

This is a claim for compensation for services performed by the claimant as Acting Secretary of the Treasury, at different periods, between the 24th of April, 1829, and the 31st of May, 1833—both days inclusive. It is also a claim for compensation for services performed as Acting Secretary of State at different periods, between the 10th of August, 1833, and the 9th of November, 1836—both days inclusive.

The petition, which is hereto attached, states that the claimant was appointed to said offices by the President of the United States, and rendered the services accordingly. It states, further, that during the times the claimant was acting as Secretary of the Treasury, he was also chief clerk in the Treasury Department; and, during the times he was acting as Secretary of State, he was chief clerk in the State Department.

The petition also states that the claimant's appointments of Acting Secretary of the Treasury were made on account of the absence from the seat of government, or sickness, of the Secretary of the Treasury; and that his appointments of Acting Secretary of State were on account of the absence or sickness of the Secretary of State.

The objection to the claim, relied on in this case, is founded on the 9th section of the act of Congress of 1818, entitled "An act to regulate and fix the compensation of the clerks in the different offices." That section is as follows :

"SEC. 9. *And be it further enacted,* That the compensation allowed by this act to clerks shall commence from and after the 31st day of March last. And it shall be the duty of the Secretaries for the Departments of State, Treasury, War and Navy, of the Commissioners of the Navy, and the Postmaster General, to report to Congress, at the beginning of each year, the names of the clerks they have employed, respectively, in the preceding year, together with the time each clerk was actually employed during the year, and the sums paid to each; and no higher or other allowance shall be made to any clerk in the said departments and offices than is authorized by this act.

And all acts, and parts of acts, inconsistent with the provisions of this act, are hereby repealed."—(3 Stat. at Large, 447.)

The meaning of that part of the above section relied on by the Solicitor is only this: That no such clerk, as there referred to, shall receive any other compensation, as clerk, than what the act allows. It does not affect the question, whether the claimant is not entitled, besides his salary as clerk, to a compensation, and if any, to what amount, for his discharge of the duties of the other offices conferred on him.

The 8th section of the act of Congress referred to by the claimant, is as follows:

"Sec. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness, of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices, until a successor be appointed, or until such absence, or inability by sickness, shall cease."—(1 Stat. at Large, 281.)

It was under that law that the claimant received from the President the appointments, authorizing him to perform the duties, respectively, of Secretary of the Treasury and of Secretary of State.

It appears to us that the petition shows that the claimant, at the times he performed the duties of Secretary of the Treasury, held an office separate from his office of chief clerk; and that he also held an office separate from that of chief clerk at the times he performed the duties of Secretary of State. He held two offices at those times; and there was no law to prohibit him from doing so. He discharged the duties of both offices, and must be entitled to compensation accordingly. He does not claim any pay beyond his salary as chief clerk, for extra services. His claim for compensation, beyond his salary as chief clerk, is on account of his holding other offices at different times whilst he was chief clerk, and of his discharging the duties of such other offices.

The claim, we think, is well founded. There is the following decision on the subject, by the circuit court of the United States for the Maryland district. It was the case of a navy agent who had been appointed acting purser. Chief Justice Taney, in delivering the opinion of the court, uses the following language:

"But he is entitled to set off the sum of \$5,328 08, for his salary as acting purser to the naval establishment at Annapolis. The Secretary of the Navy had a right to appoint a purser *ad interim*, usually called acting purser, to discharge the duties of purser at this establishment, if the demands of the public service elsewhere, or any other sufficient cause, put it out of his power to employ a purser regularly appointed. The court is bound to presume that the power, in this instance, was exercised under circumstances that justified the appointment of the defendant as acting purser. He performed all the duties of purser at

the naval establishment, settled his accounts with the proper officer at Washington as such, and not as navy agent; and was recognized as acting purser in the reports to Congress concerning certain expenditures chargeable to that branch of the service. The act of Congress fixes the salary of purser, when not otherwise provided for, at \$1,500 a year. As the defendant performed all the duties of the office, and performed them in the name and in the character of purser, he is entitled to the compensation which the law has provided for such services. The circumstance that he held the office of navy agent at the same time can make no difference. There is no law which prohibits a person from holding two offices at the same time. As a matter of policy it would certainly be highly objectionable in most cases as a permanent arrangement; but in the absence of any legal provision to the contrary, this appointment was valid. Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office, is more convenient and useful to the public than to bring in a new officer to execute the duty. And if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged."—(*The United States vs. White and others*, April term, 1851.)

That case is very similar to the one before us, and is, no doubt, correctly decided. It shows that the present claimant is entitled to receive for his services, as Acting Secretary of the Treasury and as Acting Secretary of State, the same compensation, for the time he acted, which the law then allowed to the Secretaries of the Treasury and of State, respectively.

The petition further states, that, from the 21st of June to the 7th of August, 1831, the claimant received a compensation as Secretary of the Treasury, but that during that time he did not receive his salary as chief clerk. The circumstance here stated will be taken into consideration, when an account shall be taken from the evidence of the amount to which the claimant is entitled.

The Solicitor refers us to certain acts of Congress of 1839 and 1842, (5 Stat. at Large, 349, 510, 525.) It is only necessary to observe, with respect to these acts, that they were not in force when the services now sued for were rendered.

Testimony is ordered to be taken in this case.

ASBURY DICKINS.

[To accompany Bill H. R. C. C. No. 2.]

MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Asbury Dickins, and the bill reported for his relief, have had the same under consideration, and would respectfully report:

This is a claim for compensation for services performed by the claimant, as Acting Secretary of the Treasury, at different periods between the 24th April, 1829, and 31st of May, 1833, both days inclusive; and as Acting Secretary of State, at different periods between the 10th of August, 1833, and the 9th of November, 1836, both days inclusive. The facts are unquestioned, and as the law and points involved in the case have been fully discussed by the Court of Claims in the different cases involving the same principles, now pending before the House, the committee do not deem it necessary, or proper, to enter into the discussion at any great length. The statutes under and by virtue of which the claimant was appointed, and discharged the duties of said offices, are set forth in the opinion of the Court, to which the committee respectfully refer, without repeating the same here. In the view which we take of the case, it is not important or necessary to discuss the question raised, whether the duties and employment devolved upon claimant by virtue of his said appointment, constituted an office or not. This might lead us into an ingenious discussion, in regard to the meaning of a word, but not in any manner affect the real merits of the claim. It is equally immaterial, in the opinion of the committee, to inquire or determine whether some other persons received pay for services which they never performed, but which the claimant unquestionably did perform, under a legal appointment authorized by the statutes of the country.

Among private individuals, the fact that a man had employed and paid one person to build him a house, or perform any other service, who had failed to do so, could never be set up as a defence against the

6. A statement showing the number of days Asbury Dickins served as Acting Secretary of State, and the amount allowed therefor at the rate of \$6,000 per annum; also the amount due him as chief clerk of the Treasury Department.

7. The opinion of the Court on the facts.

8. A bill to carry the decision of the Court into effect.

By order of the Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this 1st day of April, A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the honorable the Court of Claims:

The petition of Asbury Dickins respectfully sheweth: That your petitioner held the office of chief clerk in the Treasury Department from the first day of April, eighteen hundred and twenty-nine, until the twenty-second day of August, eighteen hundred and thirty-three; and the office of chief clerk in the Department of State from the said twenty-second day of August, eighteen hundred and thirty-three, to the twelfth day of December, eighteen hundred and thirty-six.

That during the period your petitioner was chief clerk of the Treasury Department, he was, at various times, on occasion of the absence from the seat of government or sickness of the Secretary of the Treasury, authorized by the President of the United States, by appointments made under the eighth section of the act of Congress passed the eighth of May, seventeen hundred and ninety-two, entitled "An act making alterations in the Treasury and War Departments," to perform the duties of the office of Secretary of the Treasury, until the absence of the head of that department from the seat of government, or his inability from sickness, had ceased. That during the period your petitioner held the office of chief clerk of the Department of State, he was also, at various times, under the provisions of the same law, appointed by the President to perform the duties of the office of the Secretary during the absence or sickness of the Secretary of State; and that your petitioner performed the duties of chief clerk and head of the department, in each of the said respective departments, during the times he held the office of Acting Secretary of the Treasury and Acting Secretary of State, respectively, under the appointments made by the President as aforesaid.

That schedule A, hereunto annexed, which your petitioner prays may be taken as part of this his petition, contains a correct statement of the times of his appointments and the number of days during which, in the absence or sickness of the Secretary of the Treasury and Secretary of State, respectively, your petitioner performed the duties of head of those departments, respectively; the period amounting in the whole to one hundred and thirty-three days during which he performed the duties of the office of Secretary of the Treasury,

and two hundred and twenty-six days during which he performed the duties of the office of Secretary of State.

And your petitioner further shows, that he never received any compensation from the United States for the performance of the duties of said offices of Secretary of the Treasury and Secretary of State, as hereinbefore specified, except for the performance of the duty of Secretary of the Treasury from the twenty-first of June to the seventh of August, eighteen hundred and thirty-one; and during this last mentioned time he did not receive his salary as chief clerk in the Treasury Department, though he performed the duties of both offices. Your petitioner further shows, that his claim is for a reasonable compensation for services rendered to the United States under the laws thereof, by due authority from the President, for which he has never received any compensation. And your petitioner submits to this honorable Court, that, though no payment could legally be made to him at the treasury in compensation for his services rendered as Acting Secretary of the Treasury and Acting Secretary of State as aforesaid, without an appropriation by law, yet the performance of the duties of those offices temporarily, under legal and valid appointment for that purpose, (as the duties performed were not incompatible with his said office of chief clerk,) created an implied contract on the part of the United States to pay him a reasonable compensation for the services so rendered by him; and your petitioner is advised that the measure of reasonable compensation could not be less than a *pro rata* portion of the annual salary allowed by law to the Secretary of the Treasury and Secretary of State during the times your petitioner performed the duties of those offices, respectively.

And your petitioner further shows, that he first presented his claim for said services as Acting Secretary of the Treasury and Acting Secretary of State to the Treasury Department, in the year eighteen hundred and forty-nine, and that the account between your petitioner and the United States was examined and adjusted by the First Auditor on the eleventh day of August in that year, but has never, as your petitioner has been informed and believes, been acted upon officially by the First Comptroller, though your petitioner is informed and believes that the present Comptroller is opposed to the allowance of the account at the treasury. And your petitioner further shows that, in stating the said account, the Auditor omitted, for want of accurate information, some of the days and times during which your petitioner performed the duties of said offices of Secretary of the Treasury and Secretary of State as aforesaid.

Your petitioner has annexed to this petition, as part thereof, in the schedule marked B, the proceedings in the Treasury Department in reference to his said claim.

And your petitioner further shows, that, at the first session of the thirty-third Congress, your petitioner presented a petition for relief; and that a bill for his relief was reported in the Senate of the United States at that session by the Committee of Claims, and passed that body; and that during the same session, the said bill was reported favorably by the Committee of Claims of the House of Representatives, and placed upon the private calendar of the said House, and was, with

other claims unacted upon, referred to this honorable Court by a general order of the said House, made on the third day of March, eighteen hundred and fifty-five.

And your petitioner further shows, that, in his said petition to Congress, and in the said bill which passed the Senate, the relief asked by and granted to your petitioner was the *pro rata* share of the salary allowed by law to the offices of Secretary of the Treasury and Secretary of State during the times your petitioner performed the duties of those offices, respectively, deducting the amount received by him as chief clerk during the same times. But your petitioner is advised that the more correct measure of compensation would be the salary of both offices during the times he performed the duties of both; and that the same measures of compensation which would be applicable on the ground of implied contract on the part of the government to pay for services rendered as Acting Secretary of the Treasury or Acting Secretary of State, where the appointment was made under the law of a person holding no office, would be equally applicable where the appointment to perform the duties was made of a person holding another office, not incompatible with the performance of the duties of those offices.

And your petitioner further shows, that he is the sole owner of the claim he has presented, and that no other person has any interest therein.

Your petitioner, therefore, prays this honorable Court that he may be allowed a reasonable compensation for services rendered to the United States, under authority of law, by due appointments by the President of the United States, on the implied contract on the part of the United States to pay for those services what they were reasonably worth, and also his salary as chief clerk during that portion of time when he was paid for his services as Acting Secretary of the Treasury, but his salary as chief clerk was withheld, as heretofore stated.

ASBURY DICKINS.

WASHINGTON, July 6, 1855.

SCHEDULE A.

Statement of the dates at which Ashury Dickins was appointed to perform the duties of Secretary of the Treasury during the absence from the seat of government or sickness of the Secretary of the Treasury; and also the duties of the Secretary of State during the absence from the seat of government or sickness of the Secretary of State, and the periods during which he acted under each appointment.

1. AS ACTING SECRETARY OF THE TREASURY.

Date of appointment	Duration of service under it.	Number of days.
April 24, 1829.....	To the 26th of May, 1829, inclusive.....	33
June 21, 1831.....	To the 7th of August, 1831, inclusive.....	48
October 18, 1831.....	To the 26th of October, 1831, inclusive.....	9
March 15, 1832.....	To the 30th of March, 1832, inclusive.....	16
October 1, 1832.....	To the 10th of October, 1832, inclusive.....	10
November 8, 1832.....	To the 17th of November, 1832, inclusive.....	10
May 6, 1833.....	To the 9th of May, 1833, inclusive.....	4
May 29, 1833.....	To the 31st May, 1833, inclusive.....	3
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2. AS ACTING SECRETARY OF STATE.

Date of appointment.	Duration of service under it.	No. of days.
August 10, 1833.....	To the 24th of August, 1833, inclusive.....	15
November 11, 1833.....	To the 15th of November, 1833, inclusive.....	5
October 11, 1834.....	To the 31st of October, 1834, inclusive.....	21
May 2, 1835.....	To the 13th of June, 1835, inclusive.....	43
July 6, 1835.....	To the 13th of July, 1835, inclusive.....	8
August 31, 1835.....	To the 8th of September, 1835, inclusive.....	9
September 28, 1835.....	To the 19th of October, 1835, inclusive.....	22
May 19, 1836.....	To the 23d of May, 1836, inclusive.....	5
July 7, 1836.....	To the 29th of August, 1836, inclusive.....	54
September 27, 1836.....	To the 9th of November, 1836, inclusive.....	44
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SCHEDULE B.

TREASURY DEPARTMENT,
Comptroller's Office, May 26, 1855.

DEAR SIR: In compliance with your verbal request, I herewith transmit to you copies of the papers on file in this office, relating to your claim for salary as Acting Secretary of the Treasury during the

[No. 101,509.]

TREASURY DEPARTMENT,
First Auditor's Office, August 11, 1849.

I hereby certify that I have examined and adjusted an account between the United States and Asbury Dickins, and find that the sum of three thousand nine hundred and seventy-six dollars and nineteen cents is due from the United States to the said Asbury Dickins for his salary as Acting Secretary of the Treasury, Acting Secretary of State, and chief clerk of the Treasury Department, under previous decisions of the First Comptroller of, and approved by, the Secretary of the Treasury, as follows, viz:

For his salary as Acting Secretary of the Treasury for various periods during the years 1829, '32, '33, per statement.....	\$1,235 57
For salary as Acting Secretary of State for various periods during the years 1833, '35, '36, per statement.....	2,479 16
For salary as chief clerk of the Treasury Department from June 21 to August 7, 1831, not heretofore paid to him, per statement.....	261 46
	<hr/> 3,976 19

as appears from the statement and vouchers transmitted for the decision of the Comptroller of the Treasury.

WM. COLLINS,
First Auditor.

\$3,976 19
To the FIRST COMPTROLLER OF THE TREASURY.

COMPTROLLER'S OFFICE.

I admit and certify the above balance this — day of ———.
—————, *Comptroller.*

To the REGISTER OF THE TREASURY.

I certify that the foregoing is a true copy from the records of this office.

T. I. SMITH, *Auditor.*

IN THE COURT OF CLAIMS.

In the matter of the claim of } Brief on behalf of the petitioner.
ASBURY DICKINS.

The petitioner founds his claim upon services rendered to the United States as Acting Secretary of State and Acting Secretary of the Treasury at various times between the 24th of April, 1829, and the 27th of September, 1836, under appointments made by the President of the United States, by authority of the 8th section of the act of May 8, 1792, entitled "An act making alterations in the Treasury and War Departments."—(Statutes at Large, vol. I, p. 281.)

No fact stated in his petition is denied on the part of the government, and the evidence rests in its own archives. In the absence of

any such denial, for the purpose of deciding on the rights of the petitioner, his statement must be assumed to be true, and the only difficulty is in presenting any *doubtful* question of law on which his right to the relief he asks can be controverted.

Upon principles of universal justice, and upon the settled and unquestionable rule of the common law, services rendered by one person to another, at his request, create a just claim to compensation against the party to whom the services have been rendered. A promise will always be implied where services are rendered upon request by A to B, without agreement as to compensation, to pay what the services are worth, and an action of *indebitatus assumpsit* will lie against the party to whom the services have been rendered.

The first question which may be presented is, does any different principle obtain as to the right to compensation where the services are rendered to the State?

No distinction can be stated which justifies the application of a different principle; and it is submitted that no semblance of an authority, in the shape of a judicial decision or dictum, recognizes any distinction.

Between individuals, where the agreement specifies the compensation as well as the service, the specific price is recoverable; and so in the case of the State, where the sum to be paid is specified in the law creating the office or authorizing the performance of the services, the legal as well as equitable obligation to pay exists. Undoubtedly, either in the case of a salary attached to a permanent or temporary office, or of services rendered under the authority of law, where no specific compensation is provided by the law which authorizes the performances of the service, the *executive department*, in our form of government, could make no payment without an appropriation by the legislature; but the equity and right of the individual to compensation would exist, though the appropriation, from accident or neglect, or misapprehension, might not have been made; and the right would be the same whether the amount to be paid had been specified in the law in the shape of an annual salary or fees, or left indefinite and dependent upon the value of the services rendered. Where the salary is specified, and the appropriation made, the salary is the measure of compensation; and where the services are rendered, and an appropriation made generally for the compensation for such services, the *quantum meruit* is the only true and legal mode of payment. The only difference is, that, in the former case, no discretion is left with the executive department; but in the latter the discretion exists to adjust the compensation within the limits of the appropriation, upon the basis of value received by the government. As just a claim would exist against the State for the unpaid residue where the appropriation was insufficient to pay for the services what they were fairly worth, as where the appropriation was insufficient to pay the amount of a fixed salary. The obligation of the State, upon any recognized principles of law or equity, would be equally strong in both cases—in the one to pay the sum it had *expressly agreed* to pay, and in the other to pay what it had agreed to pay by *implied contract*; that is, a fair equivalent for the services rendered under its authority. It is true, that if the

legislature refused to appropriate the requisite amount, the sovereign could not, under a well known rule of policy, be sued in his own courts; no payment could be *enforced*, and the claimant would be *legally* remediless. But in either case, whether the promise of the State was express to pay a fixed sum, or implied to pay what the service rendered at its request was worth, the right of the claimant would be equally violated by a refusal to appropriate, and the claim would remain valid in equity and justice. It is submitted that this Court was constituted for the purpose of determining, upon principles of equity and justice, all claims founded upon *implied* contracts with the government of the United States, as well as those founded upon express contracts, and that, in the case of a State as well as in that of an individual, an *implied* contract is as imperative in its obligation as an *express* contract.

Secondly. It may, however, be contended that as the petitioner was chief clerk in the respective departments in which he performed the duties of head of the department by due appointment, at the time the services were performed, he is not entitled to payment for services so performed; though a person unconnected with the department, and performing the same services under the same authority, would have been entitled to compensation.

If this objection is presented, it can only be on the ground that the offices were incompatible; and if the objection is made, it rests with those who represent the government to show that incompatibility, and, consequently, the violation of law by the Executive in making the appointment. But there was no law which restricted the discretion of the President in the selection of the individual who was to perform the duties of the office of Secretary of State or Secretary of the Treasury in case of the temporary inability of the regular head of the department, from absence or sickness, to perform them. The discretion of the President was absolute, under the act of 1792, as to the person to be appointed; and the relations which necessarily exist between the chief clerk of a department and its head, peculiarly qualify him, in case of accidental temporary inability of the Secretary, to supply his place. It is one of those cases in which, to use the language of Chief Justice Taney, "it oftens happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office is more convenient and useful to the public than to bring in a new officer to execute the duty." (U. S., *vs. White et. al.*, C. C. U. S., Maryland District, per Taney, C. J., manuscript, pp. 3, 4.)

Indeed, the question is not worth an argument, as the intellect, or even the imagination, may be tasked in vain to point out any incompatibility in the duties of the chief clerk of a department which disqualifies him for the temporary performance of the duties of head of the department. The offices, however, are distinct, and the incumbent of the one is under no obligation to perform the duties of the other. The duties are essentially different, and a separate salary is by law attached to each. It was not as chief clerk that the petitioner performed the duties of head of the department. In the exercise of the discretion which the law specially authorized, the President invested

him, though chief clerk, with a separate and independent office, and it was under that appointment and in that independent office he acted. Congress might, undoubtedly, have provided by law, that, in the event of the sickness or absence of the head of a department, the chief clerk should, *ex officio*, perform his duties. But Congress had made no such provision; and it no more devolved upon the chief clerk *virtute officii* to perform the duties of the office of Secretary of State in case of temporary disability of that officer, than it did upon the head of any other department or any other officer. Indeed, without an appointment by the President under the act of 1792, the chief clerk could not legally act as Secretary of State. It cannot, therefore, be objected to the claim of the petitioner that the performance of the duties for which he claims compensation was incident to his office of chief clerk.

It may possibly be contended, however, that since the passage of the acts of August 23, (Sec. 2,) and 26, (Sec. 12,) 1842, and that of March 3, (Sec. 4,) 1849, the chief clerk of a department performing the duties of Acting Secretary of the department under the appointment of the President, would not be entitled to any other compensation than his own regular salary as chief clerk. This might be admitted without touching the merits of the present claim, as *all the services of the petitioner for which he claims compensation were performed previously to the passage of those acts.*

If, with a view to prevent personal favoritism, or the holding of sinecure offices, Congress has by those laws, or either of them, prohibited the allowance of any compensation to a clerk or other officer in a department who performs the duties of any other officer in addition to his own, however wise such provisions may be for the future, they are not retrospective, and it would be gross injustice to give them *judicially* a retrospective operation.

It has been previously observed that it was no part of the petitioner's duty as chief clerk, nor could it, without express legal provision to that effect, be incident to his office of chief clerk, to perform, as such, the duties of head of department. It is not, therefore, any additional or extra pay as *chief clerk* that he claims, but the compensation justly due to him for performing the duties of a *separate and independent office*, to which he was appointed by the President by virtue of law. In support of the claim, he cites the following extract from an official opinion given by Mr. Wirt, Attorney General of the United States, on a claim of General Cass when governor of Michigan:

* * * "His salary is a compensation for his services as governor; but the services for which he claims do not belong to his duty as governor of the Michigan Territory, and having been employed by the government to perform these services, he has a fair claim for them on the principles of a *quantum meruit*. The facts conceded, his right, I think, is undeniable."—(Opinions Attorneys General, Vol. II, p. 189.)

The petitioner cites, also, the official opinion of another Attorney General, Mr. Legaré, who, in relation to a claim of Mr. Young, then chief clerk of the Treasury Department, for performing services exactly like those for which the petitioner claims, said: "In the matter of Mr. Young's claim, I am of opinion that the Secretary of the

Treasury *ad interim*, appointed by virtue of an express law, has a claim upon the government for the usual, or, if there be no usual, for a reasonable compensation for his services in that capacity; but I do not think he can obtain it without an appropriation by Congress for the purpose. The act of 1839 is imperative to that effect."—(Opinions Attorneys General, Vol. IV, p. 122.)

This opinion of Attorney General Legaré covers the case of the petitioner. He admits the obligation upon the government to pay, but advises (what is conceded here) that the executive department could not pay a claim clearly valid without an appropriation. It is in this, as in other cases, the want of an appropriation, where a right exists, which calls for the interposition of the court.

It was decided by Judge Story, in the case of the United States *vs.* Morse, (Story's Reports, Vol. III, p. 87,) that two offices, not incompatible, may be conferred on one person, and that he will be entitled to the compensation of both. A similar decision was made by Chief Justice Taney in the case of the United States *vs.* White *et al.*, already referred to. In that case, White, the defendant, had been regularly appointed navy agent, with a salary fixed by law. He was also appointed to discharge the duties *ad interim* of a purser in the navy, and performed the duties. His salary as acting purser was disallowed at the treasury under the acts of 1839 and 1842, because he was regularly in office as navy agent under a compensation fixed by law. The chief justice adjudged that he was entitled to both compensations. * * * "There is no law," said the chief justice, "which prohibits a person from holding two offices at the same time." * * * "Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office is more convenient and useful to the public than to bring in a new officer to execute the duty; and if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged."—(Manuscript Opinion, pp. 3 and 4.)

Though the petitioner held the office of chief clerk, while by the President's appointment he performed the duties of the office of head of the department, he performed faithfully all the duties of chief clerk; and it may be well imagined that it was only by great exertions that he was able to perform, and did perform satisfactorily, the duties of both offices. It was justly said by Judge Story, in the case of the United States *vs.* Morse, already mentioned, that "the law adjusts, or intends to adjust, the measure of the compensation of every officer to the duties to be performed in that office, and not in another independent office."—(Story's Reports, Vol. III, page 89.) It will not be contended by any one that the humble compensation of chief clerk was, or was intended to be, or *ought to be*, any compensation for performing, in addition, the duties of the far more important office of head of the department. And if not, the petitioner has performed the duties of Secretary of State and Secretary of the Treasury *without compensation*. In the same case of the United States *vs.* Morse, where

the court had to decide upon apparently conflicting statute provisions in relation to certain officers of the customs, which the treasury had construed to deny compensation for more than one office, Judge Story said that "where the provisions are loose or obscure, and admit of two interpretations, the construction ought to be favorable to the claims of the officer who performs the duties of two independent offices." This opinion of that wise and learned judge gives no countenance to the idea that the duties of a highly important and responsible office are to be performed *gratuitously* because they happen to be performed by a person who receives compensation for performing also the duties of another and inferior office.

In a late very elaborate opinion of the present Attorney General on the diplomatic and consular systems of the United States, (which opinion is sanctioned by the Secretary of State,) the law officer of the government recognises in the following passage, and states with great perspicuity, the leading principle upon which the petitioner is entitled to relief: "Besides which, an officer may lawfully be, and occasionally is appointed, either a statute officer or other, without any existing provision for his compensation; which, if he be lawfully appointed, creates a valid debt against the government."—(Pamphlet Opinion Attorney General Cushing, p. 30.)

The petitioner is not aware of any judicial decision or dictum which impugns the principles for which he has contended; and he submits to the Court that, conceding the facts stated in his petition to be true, (and they are not denied,) both on principle and authority he is justly entitled to compensation on the implied contract of the United States to pay him for the performance of the duties of the office of Secretary of State and Secretary of the Treasury during the times specified in his petition, his services having been rendered at the request of the government under appointments made by the President by virtue of the act of 1792.

The only question which remains is, the measure of compensation. The entire duties of the offices were performed by the petitioner while he was Acting Secretary of State and of the Treasury under his several appointments; and it is respectfully submitted that, as these offices had a specific annual salary attached to them by law, the value of the services rendered in the discharge of their duties cannot, without questioning the estimated value as fixed by the legislative authority, be deemed less than a *pro rata* portion of the salary of the office as then established.

The evidence of the petitioner's services is contained in the accompanying certificates from the Departments of State and of the Treasury. The opinions of Chief Justice Taney and Attorney General Cushing also accompany this brief.

ASBURY DICKINS.

WASHINGTON, October 4, 1855.

IN THE COURT OF CLAIMS.—No. 30.

ON THE PETITION OF ASBURY DICKINS.

Brief of the United States Solicitor.

This is a claim for compensation for acting as Secretary of State and as Secretary of the Treasury, at various times during the absence or sickness of the Secretaries, and whilst petitioner was chief clerk in those departments.

It seems to be admitted, that since the acts of 1839 and of 23d and 26th August, 1842, a similar claim could not be sustained. The act of 1839, 5 Stat. 349, provides, "that no public officer in any branch of the public service, or any other person whose salary or whose pay or emoluments is or are fixed by law and regulations, shall receive any extra allowance or compensation in any form whatever for the disbursement of public money, or the performance of any other service, unless the said extra allowance or compensation be authorized by law."

The 12th section of the act of 26th August, 1842, (see page 525, vol. 5,) enacts, "that no allowance or compensation shall be made to any clerk or other officer by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra service whatever which any clerk or other officer may be required to perform." But the act of 1818, chap. 87, p. 445, entitled "An act to regulate and fix the compensation of the clerks in the different offices," which was in force during the period for which compensation is now asked, is quite as explicit. After fixing the compensation for the chief clerks and others, it provides, in section 9, that "*no higher or other allowance shall be made to any clerk in the said departments and offices than is authorized by this act.*"

It may be said that this provision is not equivalent to those in the acts of 1839 and 1842, and that the Supreme Court, on allowing similar claims when presented as offsets, has not noticed the act now quoted, and given it the force I contend for. I have not found it quoted for the United States, I admit, by the attorneys of the United States in those cases, but it is cited by Mr. Haywood in his report in Fillebrown's case.—(See Senate Docs. 28th Cong. 1st sess., No. 213, vol. 4.)

The legislation of Congress which is reviewed in Hoyt's case, 10 Howard, 109, shows a constant effort (to use the language of the Court) "to cut up by the roots these claims by public officers for extra compensation on the ground of extra services;" and a conflict of opinion has existed to some extent between the courts and Congress on the subject, as illustrated by the cases in which the courts have decided that the officers were entitled to extra compensation, but which Congress has steadily refused to pay.

I am not disposed to deny to the present claimant any just right. His long and faithful public service in many responsible positions is well known to every one familiar with public affairs. His qualifica-

tions for the positions he has held are shown by the remarkable fact that he has been retained at his different posts amidst all the political fluctuations we have witnessed in the last thirty years. But this circumstance, which is so honorable to his capacity and fidelity, illustrates the objection which I make to the claim, on the ground that the petitioner did not perform all the duties which belonged to the Secretaries whose desks he occupied temporarily. He was there merely to perform the routine duties of the office, but not as an adviser of the President in foreign and domestic policy. He was not probably engaged an hour longer in the day whilst Secretary *ad interim*, than as chief clerk. The real labor of the office was reserved to the Secretary when he should recover from sickness, perhaps caused by overtasking the faculties whilst at his desk, or return from his journey undertaken to recruit himself for his labors. He ought to be paid his salary certainly. Few have filled these positions who have not earned all that is allowed ; and yet, if the Court allows this claim, they ought not to have received it.

M. BLAIR.

ASBURY DICKINS *vs.* THE UNITED STATES.

The opinion of the Court, delivered by Judge BLACKFORD :

This is a claim for compensation for services performed by the claimant as Acting Secretary of the Treasury, at different periods, between the 24th of April, 1829, and the 31st of May, 1833—both days inclusive. It is also a claim for compensation for services performed as Acting Secretary of State, at different periods, between the 10th of August, 1833, and the 9th of November, 1836—both days inclusive.

The petition, which is hereto attached, states that the claimant was appointed to said offices by the President of the United States, and rendered the services accordingly. It states, further, that during the times the claimant was acting as Secretary of the Treasury, he was also chief clerk in the Treasury Department ; and, during the times he was acting as Secretary of State, he was chief clerk in the State Department.

The petition also states, that the claimant's appointments of Acting Secretary of the Treasury were made on account of the absence from the seat of government, or sickness, of the Secretary of the Treasury ; and that his appointments of Acting Secretary of State were on account of the absence or sickness of the Secretary of State.

The objection to the claim, relied on in this case, is founded on the 9th section of the act of Congress of 1818, entitled " An act to regulate and fix the compensation of the clerks in the different offices." That section is as follows :

"Sec. 9. *And be it further enacted*, That the compensation allowed by this act to clerks shall commence from and after the 31st day of March last. And it shall be the duty of the Secretaries for the Departments of State, Treasury, War, and Navy, of the Commissioners

of the Navy, and the Postmaster General, to report to Congress, at the beginning of each year, the names of the clerks they have employed, respectively, in the preceding year, together with the time each clerk was actually employed during the year, and the sums paid to each; and no higher or other allowance shall be made to any clerk in the said departments and offices than is authorized by this act. And all acts, and parts of acts, inconsistent with the provisions of this act, are hereby repealed."—(3 Stat. at Large, 447.)

The meaning of that part of the above section, relied on by the solicitor, is only this: That no such clerk, as there referred to, shall receive any other compensation, as clerk, than what the act allows. It does not affect the question, whether the claimant is not entitled, besides his salary as clerk, to a compensation, and, if any, to what amount, for his discharge of the duties of the other offices conferred on him.

The 8th section of the act of Congress referred to by the claimant, is as follows:

"SEC. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness, of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence, or inability by sickness, shall cease."—(1 Stat. at Large, 281.)

It was under that law that the claimant received from the President the appointments, authorizing him to perform the duties, respectively, of Secretary of the Treasury and of Secretary of State.

It appears to us that the petition shows that the claimant, at the times he performed the duties of Secretary of the Treasury, held an office separate from his office of chief clerk; and that he also held an office separate from that of chief clerk at the times he performed the duties of Secretary of State. He held two offices at those times, and there was no law to prohibit him from doing so. He discharged the duties of both offices, and must be entitled to compensation accordingly. He does not claim any pay beyond his salary as chief clerk, for extra services. His claim for compensation beyond his salary as chief clerk is on account of his holding other offices at different times whilst he was chief clerk, and of his discharging the duties of such other offices.

The claim, we think, is well founded. There is the following decision on this subject by the circuit court of the United States for the Maryland district. It was the case of a navy agent who had been appointed acting purser. Chief Justice Taney, in delivering the opinion of the court, uses the following language:

"But he is entitled to set off the sum of \$5,328 08, for his salary as acting purser to the naval establishment at Annapolis. The Secretary of the Navy had a right to appoint a purser *ad interim*, usually called

acting purser, to discharge the duties of purser at this establishment, if the demands of the public service elsewhere, or any other sufficient cause, put it out of his power to employ a purser regularly appointed. The court is bound to presume that the power, in this instance, was exercised under circumstances that justified the appointment of the defendant as acting purser. He performed all the duties of purser at the naval establishment, settled his accounts with the proper officer at Washington as such, and not as navy agent; and was recognized as acting purser in the reports to Congress concerning certain expenditures chargeable to that branch of the service. "The act of Congress fixes the salary of purser, when not otherwise provided for, at \$1,500 a year. As the defendant performed all the duties of the office, and performed them in the name and in the character of purser, he is entitled to the compensation which the law has provided for such services. The circumstance that he held the office of navy agent at the same time, can make no difference. There is no law which prohibits a person from holding two offices at the same time. As a matter of policy it would certainly be highly objectionable in most cases as a permanent arrangement; but in the absence of any legal provision to the contrary, this appointment was valid. Indeed, it often happens that in unexpected contingencies, and for temporary purposes, the appointment of a person already in office to execute the duties of another office, is more convenient and useful to the public than to bring in a new officer to execute the duty. And if the duties of the second office are performed, and the law has fixed the compensation which it deems just for such services, it cannot be material whether they are rendered by one holding another office or not, provided they are faithfully discharged."—(*The United States vs. White and others*, April term, 1851.)

That case is very similar to the one before us, and is, no doubt, correctly decided. It shows that the present claimant is entitled to receive for his services, as Acting Secretary of the Treasury, and as Acting Secretary of State, the same compensation, for the time he acted, which the law then allowed to the Secretaries of the Treasury and of State, respectively.

The petition further states, that, from the 21st of June to the 7th of August, 1831, the claimant received a compensation as Secretary of the Treasury; but that during that time, he did not receive his salary as chief clerk. The circumstance here stated will be taken into consideration, when an account shall be taken from the evidence, of the amount to which the claimant is entitled.

The solicitor refers us to certain acts of Congress of 1839 and 1842, (5 Stat. at Large, 349, 510, 525.) It is only necessary to observe, with respect to these acts, that they were not in force when the services now sued for were rendered.

Testimony is ordered to be taken in this case.

MEMORIAL, &c., REFERRED BY THE HOUSE OF REPRESENTATIVES.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of Asbury Dickins respectfully sheweth: That, during the time when General Jackson was President of the United States, your memorialist held successively the offices of chief clerk of the Treasury Department, and chief clerk of the Department of State; that while he held the former office, and when the head of the department was absent or sick, or otherwise unable to perform the duties of his office, your memorialist was appointed by President Jackson Acting Secretary of the Treasury, and, in like manner, while he held the office of chief clerk of the Department of State, and when the head of that department was absent or sick, or otherwise unable to perform the duties of his office, your memorialist was appointed by President Jackson Acting Secretary of State—such appointments being specially authorized by law; and that for the performance of the duties of these appointments your memorialist has received no compensation, except on one occasion, where he acted in the absence of a gentleman (Mr. McLane) who had been appointed Secretary of the Treasury when out of the United States.

Your memorialist further states that, for the performance of similar duties, under similar circumstances, and under similar appointments, his successor, as chief clerk of the Treasury Department, (Mr. Young,) received a compensation equal to the salary of the head of the department, deducting therefrom the amount received by him as chief clerk; that this being the first occasion (as your memorialist believes) of such compensation being claimed by a chief clerk, the subject was carefully examined at the Treasury Department, and the allowance was made by the accounting officers, (Mr. McCulloh being Comptroller, and Mr. Collins Auditor,) with the deliberate sanction of the head of the department, (Mr. Walker;) and the like allowance was subsequently made to one of your memorialist's successors as chief clerk of the Department of State, (Mr. Fletcher Webster,) under similar circumstances; that your memorialist having, some time afterwards heard of these allowances, and considering his claim to a like allowance to have been thus authoritatively settled, presented the same with the proper vouchers to the Auditor, (Mr. Collins,) who allowed and passed it; but your memorialist, having understood that there was then no appropriation out of which it could be paid, did not urge it before the Comptroller, (at that time Mr. Whittlesey,) and has since been informed that it was by him disallowed. It is under these circumstances that your memorialist submits the same to Congress.

The services for which your memorialist asks compensation, were rendered under appointments from the President of the United States, made in virtue of the authority vested in him by the 8th section of an act of Congress, approved the 8th of May, 1792, which is in these words:

"SEC 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease."—(Little & Brown's Statutes of the United States, vol. 1, p. 281.) Though the law authorizing the appointment of persons to perform these duties is silent respecting the compensation to be allowed for them, it is believed that, upon the same principle on which services rendered for an individual at his request constitute a legal claim for compensation, services rendered for the State, by its authority, constitute an equitable claim. It was no part of your memorialist's duty as chief clerk to perform the duties of head of department; and if the President, in the exercise of that discretion which the law authorized him to exercise, saw proper to confide these duties to your memorialist, it is believed that their performance by him constitutes a claim to compensation on his part not less equitable than when performed by another.

In the consciousness of having faithfully performed these duties to the best of his ability, and in the belief that he is equitably entitled to compensation, your memorialist respectfully prays to be allowed the difference between the salary of chief clerk and that of head of a department, while he performed the duties of head of department by authority of the President; your memorialist having, at the same time, performed also the duties of chief clerk.

Your memorialist believes it is not unusual, in cases where an officer has been called to perform the duties of two offices, for him to be allowed the compensation of the highest; and in several instances where, in cases of vacancy, the head of a department has been appointed to take charge temporarily of another department, he has received the compensation of both; and the gentlemen who have done so are among the most eminent among the legal profession in the United States.

ASBURY DICKINS.

WASHINGTON, *February 13, 1854.*

IN THE SENATE OF THE UNITED STATES.—*February 23, 1854*

Mr. BRODHEAD made the following report:

The Committee of Claims, to whom was referred the memorial of Asbury Dickins, have had the same under consideration, and report:

The memorialist, at different times, held the office of chief clerk of the Treasury and State Departments; during the time he held those

offices he was, for limited periods, authorized to perform the duties of the respective heads of said departments by the President of the United States, in conformity with the eighth section of the act of May 8, 1792, and he now asks that he may be allowed the salary legally attached to the offices, the duties of which he was thus required to perform, during the periods he actually performed such duties, after deducting the amount of his pay as chief clerk.

Although the act referred to makes it "lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices," it does not provide for any compensation for the service required. But it cannot be presumed that the government intended to require such services without adequate allowance; nor is it doubted that the performance of such services, when so required by the President, affords a legal as well as equitable claim to proper compensation. And as the principle here laid down and applicable to this case has been, as the committee think, fully recognised by Congress in numerous instances, they have unanimously agreed to report the accompanying bill, and recommend its passage.

The memorial, which contains a full statement of the case, is hereto annexed.

To the Senate and House of Representatives of the United States of America in Congress assembled :

The memorial of Asbury Dickins respectfully sheweth : That during the time when General Jackson was President of the United States, your memorialist held, successively, the offices of chief clerk of the Treasury Department and chief clerk of the Department of State; that while he held the former office, and when the head of the department was absent or sick, or otherwise unable to perform the duties of his office, your memorialist was appointed by President Jackson Acting Secretary of the Treasury, and, in like manner, while he held the office of chief clerk of the Department of State, and when the head of that department was absent or sick, or otherwise unable to perform the duties of his office, your memorialist was appointed by President Jackson Acting Secretary of State—such appointments being specially authorized by law; and that, for the performance of the duties of these appointments, your memorialist has received no compensation, except on one occasion where he acted in the absence of a gentleman, Mr. McLane, who had been appointed Secretary of the Treasury when out of the United States. Your memorialist further states that, for the performance of similar duties, under similar circumstances, and under similar appointments, his successor as chief clerk of the Treasury Department, Mr. Young, received a compensation equal to the salary of the head of the department, deducting therefrom the amount received by him as chief clerk; that this being the first occasion, as your memorialist believes, of such compensation being claimed by a chief clerk, the subject was carefully examined at the Treasury Department, and

the allowance was made by the accounting officers, Mr. McCulloh being Comptroller, and Mr. Collins Auditor, with the deliberate sanction of the head of the department, Mr. Walker; and the like allowance was subsequently made to one of your memorialist's successors as chief clerk of the Department of State, Mr. Fletcher Webster, under similar circumstances; that your memorialist having, sometime afterwards, heard of these allowances, and considering his claim to a like allowance to have been thus authoritatively settled, presented the same, with the proper vouchers, to the Auditor, Mr. Collins, who allowed and passed it; but your memorialist, having understood that there was then no appropriation out of which it could be paid, did not urge it before the Comptroller, at that time Mr. Whittlesey, and has since been informed that it was by him disallowed. It is under these circumstances that your memorialist submits the same to Congress.

The services for which your memorialist asks compensation were rendered under appointments from the President of the United States, made in virtue of the authority vested in him by the eighth section of an act of Congress, approved the 8th of May, 1792, which is in these words:

"SEC. 8. *And be it further enacted*, That in case of the death, absence from the seat of government, or sickness of the Secretary of State, Secretary of the Treasury, or of the Secretary of the War Department, or of any officer of either of the said departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability by sickness shall cease."—(Little & Brown's Statutes of the United States, vol. 1, p. 281.) Though the law authorizing the appointment of persons to perform these duties is silent respecting the compensation to be allowed for them, it is believed that, upon the same principle on which services rendered for an individual, at his request, constitute a legal claim for compensation, services rendered for the State, *by its authority*, constitute an equitable claim. It was no part of your memorialist's duty as chief clerk to perform the duties of head of department; and if the President, in the exercise of that discretion which the law authorized him to exercise, saw proper to confide those duties to your memorialist, it is believed that their performance by him constitutes a claim to compensation on his part not less equitable than when performed by another.

In the consciousness of having faithfully performed these duties to the best of his ability, and in the belief that he is equitably entitled to compensation, your memorialist respectfully prays to be allowed the difference between the salary of chief clerk and that of head of a department; while he performed the duties of head of department by authority of the President; your memorialist having, at the same time, performed also the duties of chief clerk.

Your memorialists believes it is not unusual, in cases where an officer has been called to perform the duties of two offices, for him to be allowed the compensation of the highest; and in several instances,

where, in cases of vacancy, the head of a department has been appointed to take charge, temporarily, of another department, he has received the compensation of both ; and the gentlemen who have done so are among the most eminent among the legal profession in the United States.

ASBURY DICKINS.

WASHINGTON, *February 13, 1854.*

Memorandum.—For allowances to Secretaries *ad interim* and acting Secretaries, see printed receipts and expenditures 1849: page 15, Monroe, Webster, Jones, Young ; page 28, Mason, Nelson.

In previous years similar allowances were made Taney and Butler, and subsequently (it is believed) to Upshur.

TREASURY DEPARTMENT,
First Auditor's Office, April 7, 1854.

SIR : Your letter of the 6th instant, addressed to the Secretary of the Treasury, relative to the claim of Asbury Dickins, having been referred to this office, I beg leave to inform you that the amount of the claim is \$3,976 19 ; made up of the following items :

For his salary as Acting Secretary of the Treasury, for various periods during the years 1829, '32, and '33.....	\$1,235 57
For his salary as Acting Secretary of State, for various periods during the years 1833, '35, and '36.....	2,479 16
For his salary as chief clerk of the Treasury Department, from 21st June to 7th August, 1831.....	261 46
	<hr/>
	3,976 19
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Very respectfully, your obedient servant,

T. L. SMITH, *Auditor.*

Hon. J. LETCHER,
House of Representatives.

TREASURY DEPARTMENT,
Comptroller's Office, May 26, 1855.

DEAR SIR : In compliance with your verbal request, I herewith transmit to you copies of the papers on file in this office relating to your claim for salary as Acting Secretary of the Treasury during the years 1829, 1832, and 1833, and as Acting Secretary of State during the years 1833, 1835, and 1836 ; also a statement of C. T. Jones, esq., Acting Register of the Treasury, showing the days of said years on which warrants issued by the Treasury Department were signed by

you as Acting Secretary. And I state, that I have not been able to discover upon the records or files of this office, or on the files of accounts revised by this office, any evidence of the Comptroller's having made a decision upon said claim.

Yours, respectfully,

J. M. RAMSEY,

Acting Comptroller.

ASBURY DICKINS, Esq.,

Secretary of the Senate.

AN ACT for the relief of Asbury Dickins.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proper accounting officers of the Treasury Department be, and they are hereby, authorized and required to account with and allow to Asbury Dickins, late chief clerk in the Treasury Department and late chief clerk in the Department of State, for the time he discharged the duties of Secretary of the Treasury Department or Secretary of the Department of State, by appointment from President Jackson, the same compensation as was then allowed by law to the heads of those departments, deducting therefrom the compensation received by the said Asbury Dickins, as chief clerk of either of those departments, during the same time—the same to be paid out of any money in the treasury not otherwise appropriated.

Passed the Senate March 10, 1854.

Attest :

ASBURY DICKINS,

Secretary.

EVIDENCE.

No. 1.—*Certificate of Assistant Secretary of State, showing the several appointments of Asbury Dickins as Acting Secretary of State.*

DEPARTMENT OF STATE,

May, 26, 1855.

I certify that it appears from the records of commissions in this department that Asbury Dickins, esq., was appointed to perform the duties of Secretary of State, during the absence of the Secretary of State, at the following dates :

Appointed on the 10th of August, 1833.

Appointed on the 11th of November, 1833.

Appointed on the 8th of July, 1834.

Appointed on the 11th of October, 1834.

Appointed on the 2d of May, 1835.

Appointed on the 6th of July, 1835.

Appointed on the 31st of August, 1835.
 Appointed on the 28th of September, 1835.
 Appointed on the 19th of May, 1836.
 Appointed on the 7th of July, 1836.

W. HUNTER,
Assistant Secretary of State.

No. 2.—Certificate of Assistant Secretary of State, showing to what time Asbury Dickins acted as Secretary of State under his several appointments.

DEPARTMENT OF STATE,
 Washington, May 30, 1855.

I certify that it appears from the correspondence on record in this department that Asbury Dickins was acting Secretary of State—

On the 24th day of August, 1833.
 On the 15th day of November, 1833.
 On the 31st day of October, 1834.
 On the 13th day of June, 1835.
 On the 13th day of July, 1835.
 On the 8th day of September, 1835.
 On the 19th day of October, 1835.
 On the 23d day of May, 1836.
 On the 29th day of August, 1836.

And that it further appears that he was Acting Secretary of State from September 27, 1836, to November 9, 1836.

W. HUNTER,
Assistant Secretary.

No. 3.—Certificate of Assistant Secretary of State, showing the several appointments of Asbury Dickins as Acting Secretary of the Treasury.

DEPARTMENT OF STATE,
 May 26, 1855.

I certify that it appears from the records of commissions in this department that Asbury Dickens, esq., was appointed to perform the duties of Secretary of the Treasury, during the absence of the Secretary of the Treasury, at the following dates :

Appointed on the 24th of April, 1829.
 Appointed on the 21st of June, 1831.
 Appointed on the 18th of October, 1831.
 Appointed on the 17th of March, 1832.
 Appointed on the 18th of July, 1832.
 Appointed on the 8th of November, 1832.
 Appointed on the 6th of May, 1833.
 Appointed on the 29th of May, 1833.

W. HUNTER,
Assistant Secretary of State.

No. 4.—Certificate of the Register of the Treasury, showing to what time Asbury Dickins acted as Secretary of the Treasury under his several appointments.

Statement showing days upon which warrants issued by the Treasury Department were signed by Asbury Dickins, esq., as Acting Secretary of the Treasury, as appears from the warrants on file in the Register's office.

Period of time.			No. of days.
April	25 to May	26, 1829, inclusive	32
June	21 to August	6, 1831, do.	47
October	18 to October	26, 1831, do.	9
March	15 to March	30, 1832, do.	16
October	1 to October	10, 1832, do.	10
November	8 to November	17, 1832, do.	10
May	7 to May	9, 1833, do.	3
May	29 to May	31, 1833, do.	3
			130

TREASURY DEPARTMENT, *Register's Office*, May 30, 1855.

C. T. JONES, *Acting Register*.

Statement showing the number of days which Asbury Dickins served as Acting Secretary of the Treasury, and as Acting Secretary of State, and the amount allowed therefor, at the rate of \$6,000 per annum; also the amount due him as chief clerk of the Treasury Department.

AS ACTING SECRETARY OF THE TREASURY.

From 24th April to 26th May, 1829, inclusive, 33 days...	\$543 95
From 18th October to 26th October, 1831, inclusive, 9 days.....	146 74
From 15th March to 30th March, 1832, inclusive, 16 days	263 73
From 1st October to 10th October, 1832, inclusive, 10 days	163 04
From 8th November to 17th November, 1832, inclusive, 10 days.....	163 04
From 6th May to 9th May, 1833, inclusive, 4 days.....	65 93
From 29th May to 31st May, 1833, inclusive, 3 days.....	49 45
	<u>1,395 88</u>

AS ACTING SECRETARY OF STATE.

From 10th August to 24th August, 1833, inclusive, 15 days.....	\$244 57
From 11th November to 15th November, 1833, inclusive, 5 days.....	81 52
From 11th October to 31st October, 1834, inclusive, 21 days.....	342 39
From 2d May to 13th June, 1835, inclusive, 43 days.....	708 79
From 6th July to 13th July, 1835, inclusive, 8 days.....	130 43
From 31st August to 8th September, 1835, inclusive, 9 days.....	146 74
From 28th September to 19th October, 1835, inclusive, 22 days.....	358 70
From 19th May to 23d May, 1836, inclusive, 5 days.....	82 41
From 7th July to 29th August, 1836, inclusive, 54 days..	880 43
From 27th September to 9th November, 1836, inclusive, 44 days.....	717 39
	<u>3,693 37</u>

AS CHIEF CLERK OF THE TREASURY DEPARTMENT.

From 21st June to 7th August, 1831.....	<u>\$261 46</u>
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From the foregoing statements it appears that there is due to Asbury Dickins—

For his salary as Acting Secretary of the Treasury for various periods during the years 1829, 1831, 1832, and 1833.....	\$1,395 88
For salary as Acting Secretary of State for various periods during the years 1833, 1834, 1835, and 1836.....	3,693 37
For salary as chief clerk of the Treasury Department, from 21st June to 7th August, 1831	261 46
	<u>5,350 71</u>

ASBURY DICKINS vs. THE UNITED STATES.

JUDGE BLACKFORD delivered the opinion of the Court on the facts.

The material facts established by the evidence are as follows :

During the absence of the Secretary of the Treasury, Asbury Dickins, the claimant, was appointed to discharge the duties of such Secretary, at various times between the 24th of April, 1829, and the 29th of May, 1833. He discharged those duties accordingly for eighty-five days.

And during the absence of the Secretary of State, the said Asbury Dickins was appointed to discharge the duties of such Secretary, at various times between the 10th of August, 1833, and the 9th of November, 1836. He discharged those duties accordingly for two hundred and twenty-six days.

The said Asbury Dickins was chief clerk in the Treasury Department from the 21st of June, 1831, to the 7th of August, 1831, being forty-eight days.

According to these facts, we consider Mr. Dickins entitled for said services, as Acting Secretary of the Treasury, to the sum of one thousand three hundred and ninety-five dollars and eighty-eight cents; and for said services as Acting Secretary of State, to the sum of three thousand six hundred and ninety-three dollars and thirty-seven cents; and for said services as chief clerk in the Treasury Department, the sum of two hundred and sixty-one dollars and forty-six cents.

The opinion hereto attached, delivered on the question as to the validity of the petition, shows the reasons for these allowances.

The testimony in the case, and a bill on the subject, accompany the report of the case.

Mr. MOORE, from the Committee of Claims, submitted the following

VIEWS OF THE MINORITY.

The undersigned find themselves unable to concur with the majority of the committee in the conclusion to which they have arrived, that a valid claim is made out in this case against the government.

The claimant, in his memorial, represents, that while holding the office of chief clerk he was, at sundry times, *appointed* by the President Secretary of the Treasury, and afterwards of State, and that he did actually fill, at the same time, both the offices of chief clerk and Secretary in those departments, embracing between April, 1829, and May, 1833, in the aggregate 359 days.

The Court of Claims also assumed that the claimant held, by appointment, both of said offices at the same time, and for the period above stated, and, upon that assumption, they base their decision in his favor for the amount of both salaries.

Says the Court: "It appears to us that the petition shows that the claimant, at the time he performed the duties of Secretary of the Treasury, held an office separate from his office of chief clerk, and that he also held an office separate from that of chief clerk at the times he performed the duties of Secretary of State. He *held two offices at those times*, and there was no law to prohibit him from doing so."

Now, after a careful examination of all the facts and circumstances of this case, and particularly of the act of Congress under and by virtue of which claimant derived his authority to act in these several

capacities, the undersigned are forced to the conclusion, that, instead of holding *two offices at the same time*, as was assumed by the Court of Claims, said claimant, in fact, held but one office, and that was the office of chief clerk. It is true, that while holding the latter office, he was, at different times, authorized by the President to perform the duties of Secretary of the Treasury, and again of State, and did perform some of the duties thereof, during the temporary absence or sickness of those functionaries, but this, we contend, was no *appointment* to fill, or actual holding by claimant of these offices, for there was no vacancy in either—these Secretaries being still in office, and receiving the regular salaries allowed them by law.

If the claimant held those *two offices at the same time*, then there were also *two Secretaries of State* and *two Secretaries of the Treasury at the same time*; each entitled to the salary allowed by law to the incumbents of those offices. That would surely present an anomaly in our government. But let us examine the several acts of Congress bearing on this subject:

At the 1st session of the 1st Congress an act was passed for the organization of the several departments of the government, which gave to the President the appointment of the heads thereof, at all times when a *vacancy should occur* in those offices. There was no need then of any further legislation by Congress, so far as the power of *appointment* in the *President* was concerned, for it was already conferred upon him.

Some three years thereafter the act of 1792 was passed; and in pursuance of the authority conferred upon the President by this law, it is alleged that the claimant was appointed to the office of *Secretary*.

The 8th section of that act is as follows:

“That on the death, absence from the seat of government, or sickness of the Secretary of State, Secretary of the Treasury, or the Secretary of the War Department, or of an officer of either of said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to *authorize any person*, or persons, at his discretion, to perform the duties of the said respective offices, *until a successor be appointed*, or until such absence or inability by sickness shall cease.”

What was the object and the true intent of this statute, or the evil which it was intended to remedy? It certainly was not intended to confer on the President the power to *appoint* the secretaries or heads of departments—for this, as before stated, he already possessed; but it was obviously passed to provide a *remedy* for an evil which had resulted, or might result, from there being no person when a Secretary chanced to be sick, or absent temporarily, who was authorized by law, even in cases of the greatest emergency, to sign such papers and documents as required his signature. The President, by this act, was not authorized to *appoint another Secretary* in case of the temporary absence or sickness of an incumbent. The latter clause of the act, last quoted, clearly negatives any such idea.

“It shall be lawful for the President of the United States, in case

he shall think it necessary, to *authorize (not appoint)* any person or persons, at his discretion, to perform the duties of the said respective offices *until a successor be appointed.*"

Those words "*until a successor be appointed*" related to a case of vacancy occasioned by the *death* of a secretary. A chief clerk, or other person, *authorized* under this act to perform the duties of a *deceased secretary*, was not *appointed* to the office of secretary, still *less* was one who was authorized to perform those duties, while there was an incumbent of the latter office *still living and receiving the salary allowed by law.*

The claimant, while acting as chief clerk, was certainly invested with some additional powers to those appertaining to his ordinary duties; but, in our view, he was never *appointed* to fill the office of secretary, and whether any additional labor was imposed upon him thereby we have no means of ascertaining with certainty. That his duties were regarded as mainly *clerical* is shown by the fact that the *chief clerk* was almost universally chosen under the act; that they were not regarded by any President as members of his cabinet, as his constitutional advisers, is shown by the fact that they were never called into his council to consult, deliberate, and advise with the President and with other members of his cabinet. Any experienced clerk could perform the simple routine of duties imposed on him; while to discharge properly the high duties of a cabinet officer required experience, wisdom, statesmanship. The law wisely gives higher salaries in the one case than in the other, because the qualifications are higher and the responsibilities are greater also.

The only case referred to by the Court of Claims is that of the United States *vs.* White and others, decided by Chief Justice Taney, in the circuit court for the district of Maryland, in which it is said, "there is no law which prohibits a person from holding *two offices* at the same time," &c.

That was the case of a *navy agent* who had been appointed to act as purser at a particular naval station, and is clearly distinguishable from this of the claimant. The duties and responsibilities of *navy agents* and of *purser*s are different. There is no obligation imposed, by law, on the one to discharge the duties of the other in cases of vacancy. But *by the law*, creating the office of chief clerk, passed at the first session of the first Congress, said: "Chief clerks were required, *in all cases of vacancy* in the heads of their departments, to perform *some of the duties* appertaining to the office of the latter; such, for instance, as keeping the *records, books, and papers* belonging to said department. It provided as follows:

"There shall be in the said department an inferior officer, to be *appointed by said principal officer*, and to be *employed therein as he shall deem proper*, and be called the *chief clerk* of the department, &c.; and who, whenever the said principal officer *shall be removed* by the President of the United States, or in *any other case of vacancy*, shall, *during such vacancy*, have the charge and custody of all the records, books, and papers appertaining to the said department." For these extra services which the chief clerks were required, by law, to perform, in all cases of vacancy in the head of his department, it would not be

pretended that they were entitled to any extra compensation; for they were prescribed by the very act *creating* the office of chief clerk.

The salary of the chief clerks in the several departments was fixed by law. The claimant accepted that office; continued therein for several years; received and receipted regularly for the salary thereof; never expressing any dissatisfaction at being invested, though nominally, with the insignia of a higher office, and never presenting any claim for additional compensation for such extra services until more than twenty years had passed away. Could the claimant have considered himself entitled to such compensation and delayed so long in presenting his claim? We feel warranted in the conclusion that, at the time the services were rendered, he neither expected to receive compensation nor did the government expect to pay for such services.

Whence then arises the obligation on the part of the government to pay therefor? Is it because he has been long in the public service, and, as all admit, ever a faithful officer? If this constituted a valid claim, are there not others equally deserving of extra compensation?

But with the act of Congress of —, 1818, (*vide* Stat. at Large, vol. 3, p. 445, and sec. 9,) in full force, when claimant accepted the office of chief clerk, and when he rendered the services for which he now claims compensation, it seems strange that any such claim should be seriously contended for. That statute *increased* the salaries of all the clerks in the departments, including those of the chief clerks, and provided as follows:

“And no *higher or other allowance shall be made to any clerk in the said departments* and offices than is authorized by this act,” &c.

Here is a positive prohibition, as we conceive, against the allowance of any such claim as this.

For these reasons, as well as for others which might be urged, we think that no legal or equitable claim has been shown to exist against the government in this case, and therefore recommend that the bill do not pass.

SYDENHAM MOORE,
MILES TAYLOR,
J. C. KUNKEL.

MOSES NOBLE.

[To accompany Bill H. R. C. C. No. 12]

MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims, to whom was referred the bill from the Court of Claims No. 12, "for the relief of Moses Noble," have had the same under consideration, and beg leave to report:

This is a claim for fishing bounties, under the act of June 19, 1813. In the spring of 1852, the claimant, as the agent and manager of certain fishing vessels, engaged masters, or skippers, for the fishing season, and caused each of the said masters to make an agreement with every fisherman employed in each of the said vessels in accordance of the act of Congress. Under the law, the owners of the said vessels became entitled to be paid by the collector of the district of Portsmouth, New Hampshire, out of any money of the United States appropriated for such purposes, the sum of \$1,704 68. The payment, however, was refused by the collector, on the ground that no log-book of the voyage was furnished him, but the Secretary of the Treasury, to whom an appeal had been taken, refused the allowance on account of a slight informality in the instrument of agreement with the fishermen.

The Court of Claims have decided that the agreement with the fishermen was a substantial compliance with the act of Congress of June 19, 1813, and reported the bill for the relief of the claimant. Your committee fully concur with the Court of Claims in this view and accordingly report back the bill without amendment, and recommend its passage. The committee would add, there is no question as to the entire legality of the contract made with the fishermen. The informality was an omission in reducing the contract to writing. This omission the Court of Claims held to be immaterial, in which opinion your committee concur.

The COURT of CLAIMS submitted the following report.

MOSES NOBLE *vs.* THE UNITED STATES.

To the honorable the Senate and House of Representatives of the United States in Congress assembled :

The Court of Claims respectfully presents the following documents as the report in the case of *Moses Noble vs. The United States* :

1. The petition of the Claimant.
2. Depositions and other evidence exhibited in the case, and transmitted to the Senate.
3. Claimant's brief.
4. Solicitor's brief.
5. Opinion of the Court delivered by C. J. Gilchrist.
6. Bill for the relief of Moses Noble.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this 25th day of June,
[L. s.] A. D. 1856.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

To the United States Court of Claims :

Moses Noble, of Portsmouth, in the State of New Hampshire, respectfully represents, that in the spring of 1852 he was agent for and had the management of the following named and described fishing vessels belonging to the district of Portsmouth, to wit :

Name of vessels.	Tonnage.	Owned by—	Commence- ment of voyage.	Terminat'n of voyage.
			1852.	1853.
Brig Good Hope.....	105 $\frac{1}{2}$	William Tarlton.....	May 25	Oct. 29
Schooner Delta.....	67 $\frac{1}{2}$	Jeremiah Noble.....	17	Nov. 10
Schooner Jasper.....	54 $\frac{1}{2}$	James N. Tarlton, Jeremiah Noble.....	25	Oct. 12
Schooner Sardine.....	48 $\frac{1}{2}$	James N. Tarlton, Jeremiah Noble.....	17	Nov. 10
Schooner Five Sisters ...	47 $\frac{1}{2}$	James N. Tarlton, Jeremiah Noble.....	20	10
Schooner Commonwealth.	72 $\frac{1}{2}$	John Yeaton, John Tre- fethen, and Jeremiah Noble.....	April 5	10
Schooner Two Brothers..	45 $\frac{1}{2}$	James N. Tarlton, Jeremiah Noble.....	June 21	10

That, in the fulfilment of his duty as the agent and manager of said fishing vessels, and in accordance with the orders of the owners of said vessels, he, early in the said spring of 1852, and before the commencement of the fishing season of that year, engaged masters or skippers for each of said fishing vessels, for the then current fishing season, to engage in carrying on the bank and other cod fisheries; and he caused the master or skipper of each of said fishing vessels, before proceeding on said fishing voyage, to make an agreement with every fisherman employed in each of said fishing vessels, in accordance with the provisions of the first section of "An act for the government of persons in certain fisheries," approved June 19, 1813, and to conform in all particulars with the requirements of said act; and that he then, as agent of the owners, signed an instrument which was supposed to contain said agreement, and that said vessels all engaged for more than four months, (excepting the brig Good Hope, which so engaged for three months and one-half a month, with a crew of ten men,) during the fishing season of 1852, in the bank and other cod fisheries, and in all respects conformed to the requirements of the act above named, and with the requirements of the act entitled "An act laying a duty on imported salt, granting bounty on pickled fish exported, and allowance to certain vessels employed in the fisheries," approved July 19, 1813. By reason of said several acts of Congress, and in conformity with the requirements thereof, the owners, masters, and crews of said several fishing vessels became entitled to be paid by the collector of the district of Portsmouth, out of the money of the United States appropriated for such purposes, the following sums, that is to say:

To the owners, master and crew of brig Good Hope.....	\$360 00
Do.....do.....schooner Sardine	194 61
Do.....do.....do.....Delta.....	271 71
Do.....do.....do.....do.....Two Brothers...	181 94
Do.....do.....do.....do.....Five Sisters....	188 59
To the owners, master, and crew of schr. Commonwealth.	290 27
Do.....do.....do.....do.....Jasper.....	217 56
	<hr/>
	1,704 68
	<hr/>

But when this petitioner applied, on the 31st day of December, A. D. 1852, to the collector of the district of Portsmouth, for the payment of the bounty above specified, said collector refused to pay the same, upon the ground that no log-book of the voyage was furnished to him. This petitioner then applied to the Secretary of the Treasury for redress, who declined to order the bounty to be paid, not because the log-book was not furnished, but because the words "by us" and the words "to be divided among us" were omitted, not in the "agreement" actually made with the fishermen before named, but accidentally omitted in the *instrument* actually signed, and intended to include said agreement.

In order that the court may the more clearly see the grounds upon

which the Treasury Department decided that it had no authority, without an act of Congress, to order the payment of bounty to which the owners, masters, and crews of said vessels would have otherwise been entitled, the petitioner here inserts a copy of the blank instrument used in reducing said "agreement," made with the crew and fishermen of each fishing vessel, to writing, inserting within brackets the words for the clerical error of omitting which the payment was withheld.

FISHING ARTICLES.

United States of America, District of Portsmouth, A. D. 184 .

It is agreed between the owners or charterers, master or skipper, and seamen of the schooner _____, whereof _____ is at present master or skipper, now lying in the port of _____, and to be employed on a fishing voyage or voyages, to commence on the _____ and to end on the _____ 184 , unless said vessel should be previously hauled up by the mutual agreement of the parties to this agreement. That in consideration of one-half of the number of fish and oil, or proceeds of said voyage or voyages after the shoreman's share is deducted, [*to be divided among us,*] in proportion to the quantity or number of fish respectively caught [*by us,*] and oil made, we, the said master or skipper and undersigned fishermen, do agree to, and will perform, the aforesaid intended fishing voyage or voyages.

The said fishermen do hereby promise to obey all the lawful commands of the master or skipper on board said schooner and faithfully to do and perform the duty of fishermen as required by the master or skipper through the whole of the aforesaid term or fishing season, and upon no account to go on shore, nor to be absent from duty, without liberty being first obtained from the master or skipper so to do; and twenty-four hours' absence without such liberty shall be deemed a total desertion.

In case of disobedience of orders, neglect of duty, desertion, or any other unlawful act, the fisherman or fishermen so offending shall forfeit his or their share or shares of fish and oil, or proceeds of said voyage or voyages, and to pay whatever damages may accrue to the owner or charterer of said schooner _____ in consequence of the offence committed. Said damages to be assessed by referees to be chosen by the parties, from the shoremen in the river.

Time of entry.	Men's names.	Station.	Time of engagement.	Time of sailing and arriving.

And this petitioner further represents that said several agreements the fishermen were in good faith, and intended to be, and actually

were in exact conformity with said several acts of Congress before named. And all the voyages of said several fishing vessels for the fishing season of 1852 were agreed by and between all parties then to be begun, carried on, ended, settled for, and the proceeds divided in exact conformity with said several acts of Congress, and said voyages of said several vessels were managed and settled and the proceeds divided accordingly. But when said parties reduced their said agreement to writing, they made use of a blank form, which, several years before, had been prescribed by the then collector of the district of Portsmouth, which form for several years previous, and to the year 1852, was in general use in the district, and upon which fishing bounties for several years were paid without objection.

And this petitioner further represents, that neither he nor any other person interested in the voyages of said fishing vessels for the fishing season for 1852 had any knowledge or suspicion that the blanks prescribed by the collector, and so long in use, and used by the masters or skippers in reducing said agreements to writing, as aforesaid, were in any way defective, until notified thereof by the Treasury Department, and after the several voyages of said fishing vessels for the fishing season of 1852 had been settled and the proceeds divided precisely according to the requirements of said several acts of Congress, and in the belief that said agreement so required them to settle and divide the proceeds of said vessels.

The Secretary of the Treasury would not authorize the payment of said claim for \$1,704 68, because the instrument in writing did not show that the "*agreement*" was in accordance with the requirements of said several acts of Congress, and because he could not receive any evidence of what the "*agreement*" actually was, except the instrument signed by the parties.

Because said several acts of Congress were intended by all the parties to be obeyed, and have been obeyed; because said clerical error has been entirely unknown and inoperative between the parties in interest, the object of the law has been accomplished, and, as this petitioner conceives, the rights of the parties which he represents established. He claims that a clerical error that was inoperative in defeating the object of the law ought to be equally inoperative in obstructing the claim of these parties.

Wherefore this petitioner prays you to make such orders as will enable him to receive one thousand seven hundred and four dollars and sixty-eight cents, for the account aforesaid, for the benefit of whom it may concern.

MOSES NOBLE,
Agent for the Owners.
W. H. Y. HACKETT,
Solicitor for the Petitioner.

UNITED STATES, *New Hampshire, ss.*

PORTSMOUTH, *June —, 1855.*

Then said Moses Noble made solemn oath that the facts stated in the foregoing petition are true.

Before me, W. H. Y. HACKETT,
Com'r U. S. Circuit Court, District New Hampshire.

PORTSMOUTH, *June* —, 1855.

Moses Noble, who signed the foregoing petition, is duly and fully authorized to prosecute the claim therein described.

JAMES N. TARLTON,
JEREMIAH NOBLE,
JOHN YEATON,
WILLIAM TARLTON,
JEREMIAH NOBLE,
For John Trefethen's share.

IN THE COURT OF CLAIMS—No. 38.

On the petition of Moses Noble.

The United States do not deny the facts set forth in the petition; but they deny that the petitioners, upon their own showing, are entitled to relief.

1. I claim, if the petitioners in good faith have attempted to conform, and have substantially conformed to the provisions of the acts of Congress referred to, that the claim is established. That the acts of Congress, *quo ad hoc*, amount to a contract on the part of the United States with the petitioners, and that they have fulfilled their part of it.

The requirement that the "agreement" should be "in writing or print," was introduced to protect the rights of the fisherman, and to secure a fair division of the proceeds of the fishing voyages. The government, beyond its functions of protecting the citizens, had no interest in the mode or proportions in which the fish or oil might be divided. If the fish and oil were divided as the law required, and as it was supposed the agreement provided, the object of the law is accomplished and the rights of the petitioners established, even if there were a lack of precision in the terms of the agreement, or even if there were a mistake in its form.

2. My next position is, that the form of the agreement actually used is in substance in accordance with the requirements of the statutes. The language of the law is, "and shall also express that the fish, or the proceeds of such fishing voyage or voyages which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught."—(1st sect. act June 19, 1813.)

Now, I contend that the above requirement was intended to be complied with by the "agreement" made. It does not admit of any other interpretation than that the fish belonging to the skipper and crew were to be "divided among them, in proportion to the quantities or number of said fish which they may respectively have caught."

It is indisputable that the "agreement" provides that one-half of the fish and oil were to be "divided" among those who caught the fish. How can any court give effect to the language of the other clause of the "agreement," "in proportion to the quantity or number

of fish respectively caught," without adopting the rule of division required by the before-named act?

The crews could have maintained an action against the owners upon the "agreement," and upon the interpretation which I contend for. A court of admiralty would have decreed a division of the proceeds of the voyages in accordance with the same interpretation.

3. But if this "agreement" will bear an interpretation at variance with the requirements of the law, it is certain that all the parties to it interpreted it and settled by it as if it were in exact accordance with the acts of Congress, and with what they supposed the "agreement" required.

4. Can the government rightfully withhold from these fishermen their share of the bounty, upon the ground that the owners of the vessels in which they served omitted by mistake a requirement intended for the protection of these same fishermen, the omission of which was not discovered by any one until the protection intended had been fully enjoyed? After the "agreement" has effected the object of the law in protecting the fishermen, can the government omit to fulfil its own contract, upon the ground that though the "agreement" was fulfilled, it was defectively drawn?

5. Courts will hold this "agreement" to be in law what the parties in fact intended it to be, and a court of equity would reform the errors.

6. The form or blank used by the petitioners in reducing their "agreement" to writing, was prescribed by the collector of the revenue for this district, and had previously been in use and bounties paid upon it for years. I of course do not claim that this fact binds the government, but, in the equitable view of this claim which this court will take, they will regard it as an indication that the petitioners intended to be right; and, if they were wrong, they were misled by an officer of the government whom they felt bound to follow, especially in this matter, and their error was in form, not in substance.

7. If this were a proceeding between two citizens, what answer can be made that would prevail either in a court of law or equity? Will the government, in its own case, withhold what it would compel an individual to pay?

W. H. Y. HACKETT,
Solicitor for Petitioners.

IN THE COURT OF CLAIMS.—No. 38.

On the petition of Moses Noble.—Brief of the U. S. Solicitor.

This is a claim for \$1,704 68, for fishing bounties to the crews of certain vessels for the season of 1852, which were disallowed by the collector of the district of Portsmouth, New Hampshire, on the ground that no log-book of the voyage was furnished to him. When presented to the Secretary of the Treasury, on appeal from the decision of the collector, it is alleged in the petition that the Secretary "declined to order the bounty to be paid, not because the log-book was

not furnished, but because the words '*by us*' and the words '*to be divided among us*,' were omitted, not in the agreement actually made with the fishermen before named, but accidentally omitted in the instrument actually signed and intended to include said agreement."

The petition is framed upon the idea that claimant shows himself entitled to the bounties in question, if the objection made by the Secretary of the Treasury be invalid, without showing that he complied with the law on any other point save that drawn in question. He does not, in a word, attempt to set forth how he complied with the law and the regulations issued to carry it into effect, on any other but the disputed point.

It appears by the petition, that the collector excepted to one part of his case, and the Secretary of the Treasury to another part of it; and it might be, if he fully presented it to this court, that other objections might be made. I insist, therefore, that he shall state how he complied with the acts of Congress regulating the subject of the payment of fishing bounties.

Among other particulars, besides the tonnage and names of the vessels, and names of their owners, and the agreement made with the fishermen, and the year and season in which the voyages were made, &c., it ought to be stated when—that is, between what dates—the vessels were engaged; that they were engaged exclusively in taking cod fish at sea; that the master and three-fourths of the crew were citizens of the United States; that the vessels were inspected by the proper officer of the customs, (naming him,) and that he certified to the sufficiency of her outfit according to law; that a regular log-book was kept, containing entries made from day to day; that said log-book was duly presented to the collector; that the owners or agents of the vessels presented also the certificate required of them.

Without such a statement of the case, the court cannot know that the claimant is entitled, although it may not occur in the objections taken by the officers who have passed on the case. If a statement of the other essential facts which go to form a compliance with the laws be not necessary, it was not necessary to state the fact that the agreement in question was made, or to state anything more than that the owners of certain vessels which were engaged in the cod-fisheries in the year 1852 complied with the laws, so as to entitle them to the bounties claimed. This would not be deemed sufficient, I imagine; but I do not see that the statement of only one fact out of a number equally essential to showing a compliance with the law, will better enable the court to decide upon the claim, than if none of the facts had been stated.

I do not insist upon the necessity of such a statement, however, because I have any doubt of the sufficiency of the objections which appear by the petition to have been made to the claim.

And, first, with respect to the objection made by the collector that no log-book was produced and proved, as required by him, when the claim was presented to him. This evidence was prescribed by the regulations of the Treasury Department, in force at the time the bounties were claimed, and for many years previously, and it has been found a necessary piece of testimony to guard the treasury from fraudu-

lent claims. The legality of this particular requirement was recognised by Judge Story in the case of the schooner *Harriet*, forfeited for the false statement made by the agent of the owner to obtain the fishing bounty.—(See 1 Story's Rep. 251.)

The general authority of the Secretary of the Treasury to establish regulations proper to carry out the duties devolved upon him by acts of Congress, is considered in the case of the *United States vs. Bailey*, 9 Peters, 253. The question arose on an indictment for false swearing, in an affidavit prescribed by regulations of the treasury, made to carry out the law of 1832, entitled "An act for liquidating and paying certain claims of the State of Virginia." The court say: "It is the duty of the Secretary to adjust and settle these claims, and in order to do so he must have authority to require suitable vouchers and evidence of the facts which are to establish the claims."

It follows that the Secretary had authority to establish such regulations as he deemed proper and necessary to enable him to carry the law into effect. He thought the affidavit a proper and necessary voucher and part of the evidence, and the Supreme Court held that Bailey could be indicted for making it falsely, although the law did not expressly authorize or require this species of evidence.

The regulation by which the log-book is made a necessary part of the evidence to obtain the fishing bounty, depends on the same principle. The Treasury Department is required to pay the bounties under certain circumstances. To ascertain the existence of these circumstances or facts, it prescribes what proof shall be made to its officers, and, among other things, to prove the time during which the vessel has been *at sea*, and the number of fish caught by the respective fishermen—both points of prime importance for the purposes of this law; it requires that a journal or log-book shall be kept, in which these things shall be noted daily. This is plainly requisite to any fair execution of the law, and a failure to comply with the regulation is a defect of proof which cannot be supplied.

2. As to the agreement.

The law (1st section of act of 19th June, 1813, 3 Stat., p. 2) requires that the master or skipper of every vessel engaged in the cod fisheries "shall, before proceeding on such fishing voyages, make an agreement *in writing or print*, with every fisherman who may be employed therein, (except only an apprentice or servant of himself or owner,) and, in addition to such terms of shipment as shall be agreed on, *shall express whether the same is to continue for one voyage or for the fishing season*; and shall also express, that the fish or the proceeds of such fishing voyage or voyages, which may appertain to the fishermen, *shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught.*"

The agreement set out in the petition neither expresses whether it is to continue for the voyage or the season, nor does it express that so much of the fruits of the voyage as shall belong to the fishermen shall be divided among them in proportion to the number or quantities of fish taken by each fisherman.

The first omission is not noted in the argument of the counsel. His argument, however, with respect to the last, is applicable to both; that

is, that the agreement was properly understood by the skipper and his men, and acted upon as if expressed. That it was not a matter of interest to any but themselves, and as they have arranged it satisfactorily among themselves, the government, which is concerned only in the protection of individuals, should pay accordingly.

It seems to be forgotten that the arrangement in question relates not to money to which these individuals have any meritorious claim, but is a mere bounty of the government, to be paid only according to statutory enactment, in furtherance of a policy which depends for its success on a strict adherence to the terms of the law.

The design in requiring these agreements to be *express* and in *writing*, both as to the *voyage or season* for which the shipment was made, and the *terms on which the proceeds are to be divided*, was to define and fix the rights of the parties clearly beforehand, and at the same time to enable the government to supervise their proceedings, and secure the execution of the design for which it pays—of encouraging these enterprises, and particularly in stimulating individual skill and industry, in a pursuit which is found to be the best naval school.

If these laws, and the regulations to enforce them, were required to be observed absolutely by all engaged in fishing, they might be regarded as vexatious, and those called on to enforce them might be pardoned for a disposition to relax their strictness. But, as it is not compulsory upon any one to observe these provisions, and they apply only when the bounty for their observance is claimed, it is the duty of the officers charged with the payment to see that they have been strictly observed; and this court and Congress ought to be chary in destroying any of the safeguards which have been found from experience to be necessary to protect the Treasury.

M. BLAIR.

MOSES NOBLE vs. THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the Court.

This is a claim for fishing bounties, amounting to the sum of \$1,704 08 upon seven vessels employed in the fisheries in the year 1852.

The petition states the names, the owners, and the tonnage of the vessels, and the date of the commencement and termination of the voyage of each of them; that the claimant, who was the agent and manager of the vessels, before the commencement of the fishing season, of 1852, engaged masters for each of the vessels for the fishing season, for the purpose of carrying on the bank and other cod fisheries; and caused the masters, before proceeding on the voyage, to make an agreement with every fisherman in accordance with the provisions of the first section of "An act for the government of persons in certain fisheries," approved June 19, 1813, (3 Stat., 2,) and to conform in all particulars with the requirements of said act; and that he then, as the agent of the owners, signed an instrument which was supposed to contain said agreement, and that the vessels all engaged for more than four months, excepting the brig Good Hope, which engaged for

three and a half months, in the bank and other cod fisheries ; and in all respects conformed to the requirements of the act above named, and with the requirements of the act laying a duty on imported salt, granting a bounty on pickled fish exported, and an allowance to certain vessels employed in the fisheries, approved July 29, 1813, (3 Stat., 49)

The first section of the act of June 19, 1813, enacts, that the master of any vessel to be employed in the bank and other cod fisheries shall, before proceeding on such fishing voyage, make an agreement in writing or print with every fisherman who may be employed therein, and shall, in such agreement, express whether the same is to continue for one voyage or for the fishing season ; and shall also express that the fish, or the proceeds of such fishing voyage which may appertain to such fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught.

The 8th section of the act of July 29, 1813, (3 Stat., 52,) provides " that no ship or vessel of twenty tons or upwards, employed as aforesaid, shall be entitled to the allowance granted by this act, unless the skipper or master thereof shall, before he proceeds on any fishing voyage, make an agreement in writing or in print with every fisherman employed therein, according to the provisions of the act entitled ' An act for the government of persons in certain fisheries.' "

The 5th and 6th sections of the act of June, 1813, thus referred to, provide for a tonnage allowance to be made to the owners of fishing vessels, but require that the vessels shall have been employed at sea four months at least of the fishing season. The act of March 3, 1819, (3 Stat., 520,) enacts that an allowance shall be paid to fishing vessels employed in the bank and other cod fisheries, for the term of three and a half months at least of the fishing season. It has been held in relation to these acts, that they include within their terms all vessels engaged in the cod fisheries, without limitation or specification as to the length of their fares, or the nature of their fisheries.—(The schooner *Harriet*, 1 Story's C. C. R., 251.) The sums here claimed are on account of the tonnage allowance which, by the 5th section of the act of July, 1813, is the sum of four dollars for each ton over thirty, in case the vessel is actually employed at sea for four months, and the burden of each exceeded thirty tons. The act of March 3, 1819, (3 St. 520,) gives an allowance of three dollars and fifty cents per ton to vessels of such burden, which have been employed at sea for three and a half months. All these vessels were employed at sea for four months, with the exception of the *Good Hope*, which was employed at sea over three and a half months, and became entitled to an allowance of \$360, the act of March, 1819, providing that no allowance shall exceed that sum.

It is contended by the solicitor that, besides the tonnage and the names of the vessels, the names of the owner, the agreement made with the fishermen, and the year and season in which the voyages were made, it ought to be stated in the petition when—that is, between what dates—the vessels were engaged ; that they were occupied exclusively in taking cod fish at sea ; that the master and three-fourths of

the crew were citizens of the United States; that the vessels were inspected by the proper officer of the customs, naming him; and that he certified to the sufficiency of their outfit according to law; that a regular log-book was kept containing the entries from day to day; that the log-book was duly presented to the collector; and that the owners or agents of the vessels presented also the certificates required of them.

It is sufficient to say of this position that the claim is founded upon certain laws of Congress, and those are stated in the petition. The other points to which the solicitor refers are all matters of proof; and attached to the deposition of Joseph M. Edmonds, the deputy collector of Portsmouth, New Hampshire, are official copies of certificates signed by Nathaniel R. Folsom, the inspector, that each of the vessels was seaworthy; that they were found in everything suitable for the cod fisheries; that the crews were sufficient for the tonnage; that the master and three-fourths of the crew were citizens of the United States; and that in all respects each vessel was fitted for the cod fisheries, agreeably to the provisions of law, and that the agreement between the master and fishermen was duly executed by them and the owner or his agent. Edmonds deposes, that each of the vessels was examined by an officer detailed for the purpose; that they were found to be properly fitted for cod fishing, according to law and the regulations of the Treasury Department; and that certificates were given, copies of which have been above mentioned. Annexed to his deposition, also, are the original statements of Moses Noble, agent for each of the vessels, of the time of sailing and returning from sea of each vessel, and his affidavit, proving the instrument executed by the fishermen, authenticated by the custom-house seal, and sworn to before the deputy collector at Portsmouth.

An objection was made by the collector to the payment of these bounties, because no log-book was produced before him, as required by the regulations of the Treasury Department. To show that it was competent for the department to require the production of a log-book as a condition precedent to the payment of the bounties, the United States rely on the case of *The United States vs. Bailey*, 9 Peters, 251. In that case the defendant was indicted for false swearing under the 3d section of the act of March 1, 1823, ch. 165, which provides for the punishment of any person who shall swear falsely touching the expenditure of public money, or in support of any claim against the United States. The indictment was for swearing falsely in an affidavit, in support of such a claim, under the act of July 5, 1832, for liquidating and paying certain claims of the State of Virginia. The 3d section directed the Secretary of the Treasury to adjust and settle certain claims for half-pay under that act. It is said by the court: "It is a general principle of law, in the construction of all powers of this sort, that where the end is required, the appropriate means are given. It is the duty of the Secretary to adjust and settle these claims, and in order to do so he must have authority to require suitable vouchers and evidence of the facts which are to establish the claim." Upon this ground it was held that the Secretary was authorized to require an affidavit in support of the claim. It is to be

observed that the act of Congress did not prescribe the character of the proof, nor upon what evidence the Secretary should adjust and settle the claim. It was consequently his duty to adopt the appropriate means, and to prescribe the necessary regulations. He might require legal evidence, by which is ordinarily understood evidence under oath. The decision therefore does not apply to a case where the proof has been already pointed by an act of Congress.

The case of the Schooner *Harriet*, 1 Story C. C. R., 252, which has been referred to, was a libel of seizure for an alleged forfeiture, charging that the owners of the vessel did, by fraud and deceit, obtain the allowance provided for vessels employed in the fisheries, contrary to the act of 1823, ch. 34. It appears from the opinion of the court, that in order to prove that the vessel was absent at sea for the period of four months, a certificate, purporting to be such a certificate as is required by the 7th section of the act of 1813, ch. 34, was produced and sworn to, and on this certificate the allowance was paid. The certificate stated the particular times of the sailing and return of the *Harriet* on her different fares, amounting in all to one hundred and thirty-one days. There was, however, an error in the calculation, apparent on the face of the paper, of ten days, so that the whole period of her absence was only one hundred and twenty-one days. The court therefore held that it was manifest that she was not entitled to the allowance on the very face of the certificate, and it was further held that it was fraudulent. To show the manner and the circumstances under which the certificate was made, a witness was introduced, and an almanac, purporting to be the almanac in which the original days of the sailing and return of the *Harriet* were marked, partly in pencil marks of R. (Return) and S., (Sailing,) and dots in ink against certain days in the almanac, as being the very days of S. (Sailing) and R. (Return.) It was held that this was not in any just sense a journal.

It is said by the court (p. 260) "the true duty of the owner and skipper of these boats and vessels is to keep an exact journal or memorandum of the actual times of being at sea, whether whole days or parts of days, and thus to enable the collector, or other officers of the customs, to ascertain with entire exactness the time passed at sea." This is undoubtedly true as a matter of convenience, particularly where numerous fares or trips are made in the course of the fishing season. But the remark is not made for the purpose of stating that keeping a journal is necessary in order to entitle the party to the bounty; but it is made for the purpose of contrasting it with the almanac offered in evidence, of which the court say: "The mere marking or mere dotting of an almanac, which might be exchanged or altered at pleasure, would be, and could be no just or sufficient proof of the verity of the marks or dots therein, as expressing the true times. If any document of this sort is to have weight as an original journal or memorandum to repel suspicion or to establish verity, it must be some document which, in its nature or character, like a log-book kept at sea, should contain original entries, made from day to day, and be beyond question a document not made up for a particular purpose afterwards upon general recollections and suggestions of the parties in interest. What I desire to say is, that for the reasons already

suggested, the almanac already produced as a memorandum of the times of the sailing and of the return of the *Harriet*, on her several voyages or fares, is not a satisfactory document to relieve the case from any otherwise well-founded suspicions of bad faith, or fraud, or deceit." Throughout the case no allusion is made to any regulation of the Treasury Department requiring the production of a log-book. Now, when an act of Congress makes it the duty of the Secretary of the Treasury to adjust and settle certain claims, and points out no mode of proving them, as in the case of *The United States vs. Bailey*, before referred to, it may well be that he is to prescribe such rules and modes of legal proof as appear to him to be judicious. But where an act of Congress provides that a sum of money shall be paid upon the production of certain proof, the Secretary cannot superadd to this further proof not required by the act. This would be to give him the power of legislation, and that, too, upon a subject upon which Congress had already legislated. If he possesses this power, so do all the other departments, and so does the judiciary; for it would be equally competent for them to say that they would not consider a claim as valid, unless evidence were produced not required by the act. The 7th section of the act of July 29, 1819, (3 Stat. 52,) enacts, that before the owner of a vessel receives the allowance mentioned in the act, he shall produce to the collector a certificate mentioning the days on which the vessel sailed and returned on her different voyages, and shall make oath to its truth, and certificates in accordance with this provision are among the papers in the case. The inference is irresistible, that upon the production of the certificate the owner is entitled to the allowance; and it is equally clear, that in the opinion of the court in the case of the schooner *Harriet*, if there had been no fraud in the certificate nothing further would have been required.

Even if it should be supposed that the production of the log-books should be necessary before the party could be entitled to the allowance, it is a question whether their absence is not sufficiently accounted for. The log-books of three of the vessels, the *Sardine*, the *Good Hope*, and the *Delta*, are produced and attached to the deposition of Moses Noble. The non-production of the log-books of the remaining four vessels is accounted for by Noble as follows: "In two of said four vessels log-books were kept; in the third the master kept a log-book in an almanac; the master of the fourth vessel could not write, and kept no log-book. The claims for bounties being suspended at the Treasury Department for said alleged informalities in the shipping articles, I paid no attention to the log-books of the four vessels last named, and those which were kept have become lost, and I am unable to find them. One of said masters has moved out of the State, and the present residence of another of them is unknown to me." Now there is no reason why a log-book may not be kept in an almanac, if the times of sailing be denoted with sufficient certainty, so as not to be liable to the objections stated in the case of the schooner *Harriet*. Nor can we suppose that the misfortune of a master in being unable to write would be punished by his being deprived of the bounty given for the encouragement of the fisheries and seamen, if any reliable evidence could be procured of the times of sailing and returning from other sources.

But the absence of the log-books was not relied upon by the department, and we do not think their production was necessary for the reasons above stated. It is unnecessary, therefore, to determine whether their absence is sufficiently accounted for. The important question presented by the case is that which arises about the construction of the instrument containing the agreement with the fishermen. The claimant, after the decision of the collector in relation to the log-books, appealed to the Secretary of the Treasury, who, not considering the question as to the log-books a material one, decided that the agreement was defective.

The first section of the act of June 19, 1813, enacts, that the master of any fishing vessel shall make an agreement with every fisherman, and shall in such agreement express whether the same is to continue for one voyage or for the fishing season, and shall also express that the fish, or the proceeds of such fishing voyage which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught. The 7th section of the act of July 29, 1819, enacts, that the owner, previous to receiving the allowance made by the act, shall produce the agreement to the collector, and also a certificate mentioning the days on which the vessel sailed and returned on the several voyages or fares she may have made. The 8th section enacts, that the vessel shall not be entitled to the allowance made by the act, unless the master shall make an agreement with each fisherman, according to the act of June 19, 1813. This, it may be remarked, is the only condition precedent, in terms required by the act of Congress. This last mentioned act requires that the agreement shall express whether it "is to continue for one voyage or for the fishing season." The agreement embodied in the petition states, that the vessel is "to be employed on a fishing voyage or voyages, to commence on the ——— and to end on the ———, 184 .". This seems to be a literal compliance with the act. By this act, also, the agreement is to "express that the fish, or the proceeds of such fishing voyage or voyages which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish which they may respectively have caught." The agreement produced is expressed to be "in consideration of one-half of the number of fish and oil, or proceeds of said voyage or voyages, after the shoreman's share is deducted, in proportion to the quantity or number of fish respectively caught and oil made." By this agreement the quantity, which in the words of the act "may appertain to the fishermen," is one half the proceeds of the voyage, and the question made is whether this quantity is, by the language of the agreement, to be divided among the master and fisherman in the proportion mentioned in the act. The words "to be divided among us," or words of that import, are omitted; but the agreement is to be so construed that it shall have a meaning, if possible, and that every part shall have its effect. Unless the words referred to are understood, all that follows in relation to the "proportion" is entirely without meaning. Moreover, the agreement expressly provides that one half the proceeds of the voyage shall belong to the fishermen in proportion to

the quantity of fish respectively caught. Now, if they were entitled to the proceeds in this proportion, of course the proceeds were to be divided among them in such proportion. We do not think that any further comment on the subject can make the matter more clear than this statement of it.

Our opinion is, that the objection, that the agreement does not show by whom the fish were to be caught, is untenable. No other inference can be made from the agreement than that the fish to be divided among the fishermen were to be the fish caught by them. It certainly did not refer to other fish caught by other persons not parties to the agreement.

It is not necessary to inquire into the question of licenses to these vessels, as the solicitor admits they were licensed, and raises any question on the point. We find the facts proved necessary to entitle the claimant to the allowances prayed for, and we report a bill for his relief accordingly.

LIEUTENANT GEO. A. MAGRUDER.

[To accompany Bill H. R. C. C. No. 11.]

MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims to whom was referred Bill No. 11, from the Court of Claims, for the relief of George A. Magruder, have had the same under consideration, and beg leave to report :

The committee, after giving to this case all the consideration which their other engagements will permit, feel compelled to dissent from the opinion of the Court herein. The facts are nearly all set forth in the petition of the claimant, the argument of the Auditor, and the opinion of the Court, and will not be repeated here in detail.

It is shown by the record that the department having determined to send a naval force to the East Indies, and to order Commodore Read to command it, informed him, that when he should report at Norfolk, and *assume the command of the frigate Columbia*, he would be considered as in command of the squadron. This double assignment of duty is of frequent occurrence in the naval service. A full complement of officers was at the same time ordered, including lieutenants. Commodore Read, having assumed the command of the Columbia in pursuance of said order, applied to the department to have his senior Lieutenant, G. J. Pendergrast, appointed an "acting commander;" Lieutenant Pendergrast made a similar request. Commodore Read thus writes to the Secretary of the Navy :

U. S. FRIGATE COLUMBIA,
Gosport, April 2, 1838.

SIR: Enclosed you will receive a communication from Lieutenant Pendergrast, which he has requested me to forward. By a reference to my letter of the 25th January, you will perceive that I anticipated there would be expectations which I did not feel myself at liberty to gratify.

Being under the impression that no acting appointment should be

made, unauthorized by the honorable the Secretary of the Navy, by a commanding officer, without an absolute necessity for it, I made known this opinion to Lieutenant Pendergrast, and told him that as such a case might not occur, he had better have an understanding with the department on the subject.

In the letter above referred to I took the liberty of mentioning the acting appointments made by Commodores Ballard and Kennedy, in the hope that you would perceive the similarity between the cases of Lieutenants Stribling and Pendergrast, both being first lieutenants of ships bearing pennants; both having been long in service, and both having been employed in the same service. I was aware that you would not direct such appointment to be made before sailing; but I confidently expected that you would grant me the same power which was acknowledged by the approval of Commodore Kennedy's act. I am extremely anxious that something should be done in this matter. Dissatisfaction must follow disappointment, and create an unpleasant state of things should Mr. Pendergrast go out with me.

I should be much pleased to have you merely intimate that on leaving the shores of the United States I might give Lieutenant Pendergrast an acting appointment.

With great respect, I am, sir, your obedient servant,
GEO. C. READ.

Hon. MAHLON DICKERSON,
Secretary of the Navy.

To this letter the commodore received the following reply :

NAVY DEPARTMENT,
April 11, 1838.

SIR: Your communication of the 2d instant is received.

I cannot authorize an acting appointment as commander to be conferred on your first lieutenant; but if you desire it I shall at once order another captain to the Columbia.

In the case of the North Carolina, to which you allude, this department has given no sanction to the acting appointment; in that of Lieutenant Stribling the sanction was not given until after the return of the Peacock, and then it was under very peculiar circumstances, not likely soon to occur, that the increased pay was allowed.

I am, respectfully, yours,

M. DICKERSON.

Commodore GEO. C. READ,
Commanding U. S. Frigate Columbia, Norfolk.

Here we have the full recognition of the fact, by Commodore Read, that without the "authority of department," or in case of "absolute necessity," he had *no power* to confer an acting appointment; and, also, the positive *refusal* of the Secretary to confer such authority. The commodore was tendered a captain to command his ship, but this he declined, preferring to retain the command himself. To Lieutenant Pendergrast the Secretary wrote as follows :

NAVY DEPARTMENT,

April 11, 1838.

SIR: In reply to your communication of the 30th ultimo, I have to inform you that I cannot confer on you the acting appointment desired, especially as *there are many commanders now in the service unemployed and eager for orders.*

I am, respectfully, yours,

M. DICKERSON.

Lieutenant G. J. PENDERGRAST,
U. S. Frigate Columbia, Norfolk.

One reason assigned by Mr. Dickerson for refusing the acting appointment was that there were many commanders in the service, but unemployed, though drawing their pay. He did not deem it proper, under such circumstances, to swell the number by acting appointments. The same reasoning would apply with equal force to the grade of captain. If Commodore Read desired it, the secretary offered to order to the Columbia another captain, but this offer was not accepted, and the Columbia sailed on her voyage; Lieutenant Pendergrast having been detached from her, and Lieutenant Geo. A. Magruder (the claimant) ordered in his place.

Under such a state of facts your committee are at a loss to conceive how a claim could arise for discharging the duty, temporarily, of captain on board the Columbia, unless it could be shown that there existed an "absolute necessity" for it, which is not pretended by either the claimant or the Court. The act of the 3d of March, 1835, says: "Officers temporarily performing the duties of those of a higher grade shall receive the compensation belonging to those of the higher grade while actually so employed." This act, properly construed, unquestionably means merely that an officer performing such duties *under proper authority* should be entitled to increased pay, and not that an officer should perform them of his own accord or under incompetent authority and then claim the benefit of the law. Such is held to be the proper construction of the act by the Court of Claims. Chief Justice Gilchrist, in delivering the opinion of the Court, said: "It would be unreasonable to hold that an officer might perform the duties of a higher grade under incompetent authority, and then claim the benefit of the act." And again: "If any evidence exists which shows that although he actually did the duty, he performed it under such circumstances as would render it unreasonable and contrary to the true meaning of the act that he should receive additional compensation, then *it should not be paid.*"

It is a singular fact that the Court of Claims nowhere pretend that Lieutenant Magruder performed the duties of captain of the Columbia under "competent authority;" and the committee are of the opinion that the evidence clearly proves that if performed at all, they were performed without competent authority, and in direct violation of the regulations of the Navy Department. Under these regulations, and by the complement table, approved by the President February 3, 1838, there could be but one captain on a first class frigate like the Columbia.

On the 3d of December, 1841, Mr. Upshur, then Secretary of the Navy, writes that "Commodore Read was commander of the frigate Columbia, as well as of the East India squadron, on his late cruise." On the 24th of March last, Secretary Toucey, in a communication addressed to the chairman of your committee, stated that Commodore Read was commander of the Columbia, and was *borne as a part of the ship's complement*, that vessel being entitled to only one captain, and added, "Nor do I think, under the circumstances of the case, he could have properly devolved the command of that vessel on him, (Lieutenant Magruder.)"

Thus it is shown to the satisfaction of your committee, that Lieutenant Magruder never had such authority to perform the duties of captain or commander of the Columbia as to entitle him to receive the compensation claimed.

It is true that for several months during the cruise of the Columbia Commodore Read was absent from his ship, on shore, and that during that period the duties of captain of the ship necessarily devolved upon the claimant.

The following certificate from Commodore Read explains the circumstances of his absence from the Columbia, and why he "was obliged to leave to the senior lieutenant, Mr. Magruder, the performance of the duties of the ship."

"I certify that the frigate Columbia, under my command, entered the waters of China, and remained in the same from 27th April to 8th August; and that during the period embraced by those dates I was obliged to be much on shore, the communication between which and the ship inconvenient; and I further certify that my absence from the ship was necessary during a large portion of the above time, on account of the unsettled state of affairs at Canton, and the danger that menaced our citizens, there being afforded a better opportunity of knowing what was passing and of communicating with Canton; that *during my detention in China* my attention was so much occupied with the affairs of our merchants that *I was obliged to leave to the senior lieutenant, Mr. Magruder, the performance of the duties of the ship*, and that he did perform all the duties that a captain would have done, had there been one attached to my command.

"GEO. C. READ.

"PHILADELPHIA, December 11, 1841."

The implication here is that during the time not embraced in the certificate Mr. Magruder did not perform the duties of captain. During the commodore's absence on shore, he says he "*was obliged to leave to Mr. Magruder the performance of the duties of the ship*," and for this service Lieutenant Magruder did receive the full pay of a captain.

It is contended that Commodore Read was not the captain of the Columbia during this cruise, but only captain in command of the whole squadron, and in support of this position the following certificate of Commodore Read has been recently filed with the papers:

"I certify that my position was that of commander-in-chief of the United States naval forces in the East Indies, and not captain of a single ship, and that I received no order from the department directing me to perform the duties of captain of the frigate Columbia.

"GEO. C. READ.

"PHILADELPHIA, *March* 13, 1858."

This last certificate, and that of February 3, 1855, printed in petition of claimant, cannot, in the opinion of your committee, overrule the order and direction of the Navy Department, if, indeed, it is reconcilable with the purport of that given by Commodore Read on the 11th December, 1841, in which he singles out the period when he was on shore, and when he "was *obliged* to leave to the senior lieutenant" the performance of the duties of the ship. But without commenting upon the character and effect of these several certificates, it is sufficient for your committee to know that the government regarded Commodore Read as being in command of the Columbia, and that by the orders under which he sailed it was his duty to act as such when on board; nor can the official statements and records of the Navy Department be rebutted by the mere certificate of any officer acting under its direction. The Secretary of the Navy says that Commodore Read was in command of the Columbia, and "was borne as a part of the ship's complement."

The committee do not here make an issue with the Court of Claims on the construction which that Court places upon the act of Congress on which this claim is based. But with all due respect it is submitted, that the Court has taken for granted facts not established by the testimony, and have overlooked the controlling fact that there was, at the time covered by the petitioner's present claim, on board the Columbia a captain, whose duty it was to discharge the labors and take upon himself the responsibilities of that office; and consequently that, according to the construction which the Court places upon the act, no inferior officer could properly discharge those duties so as to entitle him to the additional compensation.

The committee, therefore, report back the bill from the Court of Claims, with a recommendation that it do not pass.

NAVY DEPARTMENT,
March 24, 1858.

SIR: I have the honor to return herewith the papers submitted to the department, with your letter of the 8th instant, in relation to the claim of George A. Magruder to the pay of a captain while attached to the United States frigate Columbia, in 1838-'39-'40.

I am requested in your letter to furnish any information in the possession of the department bearing upon the claim, and to state "who was recognized by the department as being in command of the United

States frigate Columbia, from the 8th April, 1838, to the 28th of June, 1840; and whether, under the circumstances surrounding the case as shown by the record, Captain Read could have properly devolved the command of his ship upon Lieutenant George A. Magruder, the present claimant."

It is shown by the record that the department, having determined to send a naval force to the East Indies, and to order Commodore Read to command it, informed him that when he should report at Norfolk, and assume the command of the Columbia, he would be considered as in command of this force. A copy of this letter, dated September 11, 1837, is herewith enclosed.

January 25, 1838, Commodore Read requested authority to give the first lieutenant of the Columbia, Mr. Pendergrast, an appointment as lieutenant commandant of that vessel. This request was not granted; the department replying that a new table of complements had just been adopted, a copy of which would be sent to him in a few days for his guidance on the subject. A copy of this letter, dated February 3, 1838, is also inclosed herewith.

This complement table, approved January 20, 1838, was sent to Commodore Read. It allowed to a first class frigate (the rate of the Columbia) *one captain only*, and no commander or lieutenant commandant; and provided that where a commander of a squadron was also the commander of a particular ship he was to be borne as a part of that ship's complement.

However, in March, 1838, Lieutenant Pendergrast applied to the department for an appointment as acting commander of the Columbia, and the application was forwarded and urged by Commodore Read. The department declined to make or to authorize the appointment—stating to Lieutenant Pendergrast that there were a number of unemployed commanders eager for orders; and to Commodore Read that another captain would be ordered to the Columbia, if he desired it. Whereupon Lieutenant Pendergrast was detached, at his own request, from the ship, and Lieutenant Magruder ordered in his place.

The Columbia sailed from Norfolk for the East Indies in May, 1838, and returned to Boston in June, 1840. Lieutenant Magruder afterwards presented a claim to the Fourth Auditor of the treasury for pay as captain of the Columbia during the cruise, who requested to be informed by the department whether Commodore Read was commander of the frigate Columbia, or commander of the squadron only. The department replied that he was commander of the Columbia as well as of the East India squadron on his late cruise. Copies of these letters are herewith transmitted, dated December 3, 1841. Commodore Read was, therefore, borne as a part of the Columbia's complement, and she was entitled to but one captain.

There is no evidence on file of Commodore Read having requested permission of the department to confer, or that he did confer of his own authority, an acting appointment as captain, commander, or lieutenant commandant of the Columbia upon Lieutenant George A. Magruder. Nor do I think, under the circumstances of the case, he could have properly devolved the command of that vessel upon him. To have conferred an acting appointment as commander upon him would

LIEUTENANT GEORGE A. MAGRUDER.

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have been in direct opposition to the views and intentions of the department, as expressed upon the subject in the case of Lieutenant Pendergrast.

I am, very respectfully, your obedient servant,

ISAAC TOUCEY.

Hon. S. S. MARSHALL,

Chairman of the Committee of Claims, House of Reps.

NAVY DEPARTMENT, *September 11, 1837.*

SIR: Your letter of the 8th instant is received. Before you shall proceed to Norfolk you will be informed of the sloop-of-war and the commander that will be appointed to serve under your direction in the East Indies; and on your reporting to Commodore Warrington, and assuming the command of the Columbia, you will be regarded as commander of the naval force to be employed in the East Indies.

I am, respectfully, yours,

M. DICKERSON.

Captain GEO. C. READ,

United States Navy, Philadelphia.

NAVY DEPARTMENT, *February 3, 1838.*

SIR: In reply to your letter of the 25th ultimo in behalf of Lieutenant Pendergrast for the appointment of lieutenant commandant on board the Columbia, I have to inform you that a new table of complements has just been adopted, and is now in the hands of the printer. It will be forwarded to you in a few days, and will show the grades and complements of officers, &c., to which the Columbia and the John Adams will be entitled, and by which you will be guided on the subject.

I am, respectfully, yours,

M. DICKERSON.

Commodore GEO. C. READ,

Commanding United States Frigate Columbia, &c., Norfolk.

TREASURY DEPARTMENT,

Fourth Auditor's Office, December 3, 1841.

SIR: By a regulation annexed to the table of complements approved by the President on the 20th of January, 1838, it is declared that, "when the commander of a squadron is also the commander of a particular vessel, he is to be borne as a part of her complement." I have the honor to request that you will inform me whether Commodore

Read, in his late cruise to the East Indies, was commander of the frigate Columbia or commander of the squadron only, and, therefore, not forming a part of her complement; a claim having been presented to this office which is considered as depending upon the determination of that question.

I have the honor to be, sir, very respectfully, your obedient servant,
A. O. DAYTON.

Hon. ABEL P. UPSHUR,
Secretary of the Navy.

NAVY DEPARTMENT,
December 3, 1841.

SIR: In reply to the inquiry in your letter of this day, you are informed that Commodore Read was commander of the frigate Columbia, as well as of the East India squadron, on his late cruise.

I am, respectfully, sir, your obedient servant,
A. P. UPSHUR.

A. O. DAYTON, Esq.,
Fourth Auditor.

GARDNER & VINCENT ET AL.

[To accompany Bill H. R. No. 569.]

MAY 14, 1858.

Mr. GOODWIN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom were referred the claims of Gardner & Vincent, A. S. Gardner, A. F. Holmes, G. B. Murfey, O. C. Carlton, N. E. Crittenden, O. A. Brooks & Co., and W. Bingham & Co., praying compensation for certain goods furnished the marine hospital at Cleveland, Ohio, have had the same under consideration, and beg leave to report:

The evidence shows, beyond a doubt, that these several parties furnished various materials for the completion of the marine hospital at Cleveland, Ohio, in the year 1851. Mr. Coon, the late superintendent, certifies to this fact. He says: "These goods * * * * were furnished for the use of the United States marine hospital under my direction, as agent for the government. All of said goods were used in preparing said hospital for the reception of patients, under instructions to me from the Secretary of the Treasury. The prices stated in said accounts were proper and reasonable, and said accounts have never been paid." This statement is sworn to by Mr. Coon, and the reason given for not paying the accounts is that the appropriation ran out before they were paid. Your committee have no doubt the goods for which the claimants now seek to be paid were received and appropriated by the government, and they therefore report the accompanying bill, and recommend its passage.

LIEUTENANT LOOMIS L. LANGDON.

[To accompany Bill H. R. No. 570.]

MAY 14, 1858.

Mr. GOODWIN, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims, to whom was referred the petition of Loomis L. Langdon, "praying to be refunded the amount of certain moneys stolen from his custody at Brownsville, Texas," have had the same under consideration, and beg leave to report:

In the month of May, 1857, the assistant commissary of subsistence United States army, stationed at Brownsville, Texas, was ordered away from that post and Lieutenant Loomis L. Langdon, of the 1st artillery, appointed to discharge the duties as acting assistant commissary of subsistence, and as such took charge of the government funds. The following affidavit, made and sworn to by Lieutenant Langdon himself, details the particulars of the robbery:

"On the morning of the 24th of October, between the hours of three and five, my iron safe was opened by some person or persons, at present unknown, and the sum of \$1,176 66 of public funds, belonging to the subsistence department of the United States army, stolen therefrom.

"The key of this safe I always kept in my possession in my trunk, and the trunk key I carried with me. As soon as I heard of the robbery I opened my trunk and found the safe key there. *I always opened and closed the safe myself.*

"The safe had been formerly kept in the quartermaster's building, but, not deeming it secure there, I had it removed to the office, a small room in the front of the commissary store-house. This building is about five rods from the guard-house, with the office windows and door nearest the office looking out on the most frequented part of the garrison. The office door is an inner one. *The store-house is under charge of the guard, and the sentinel on No. 1 walks within a few feet of the office and in front of it.*

"On the morning of the robbery, about one o'clock, a fire broke out in Brownsville, which is near Fort Brown. The fire, distant from the

guard-house about thirty-five rods, raged so violently that it was deemed essential to the safety of the town to send the troops to aid the citizens. By order of the commanding officer, the whole command, *with the exception of the guard*, was absent, and the garrison, therefore, unusually exposed to the numerous thieves in the vicinity.

"The garrison and town of Brownsville have so often been the scene of robberies that unusual precautions have to be taken against thieves. I mention this to show what a bad neighborhood this is for the security of property. Scarcely a week passes without a robbery being committed in town.

"Disbursing officers at this post have three times before been robbed, and in spite of sentinels almost at their very doors. The officers' quarters have been entered and their property stolen. During the fire ninety-five kegs of powder exploded, increasing the excitement by the loss of several valuable lives, and materially injuring all the buildings in the vicinity. In the garrison the doors and windows of the different store houses were violently thrown open in spite of iron fastenings. The thieves took advantage of the facilities afforded by the explosion and the absence of the whole command at the fire to rob me. The guard, perhaps, unconsciously partaking of the general excitement, had their attention drawn off their duty in some degree. The command saved the town by working at the fire till daylight, and thus for six hours the garrison was almost untenanted.

"Every precaution, with the means furnished me by government, was taken by me to secure the property entrusted to my care.

"I had removed the safe from the place where it had been formerly kept by the officer in charge of it, not deeming it secure, and placed it in the office *where the sergeant could sleep by it*, and where the office in which it was placed *would be under the eyes of the guard*.

"The only night the sergeant left it was the night of the fire, and then *only at intervals* to work with the rest of the command. During one of these intervals the money was taken. As I always kept the key in my own possession, the thieves could not have obtained an impression from it.

"LOOMIS L. LANGDON,
2d Lieut. 1st Art. A. A. C. S."

Sworn to and subscribed before me, on this 4th day of November, 1857.

GEO. DYE,
Mayor of the City of Brownsville.

From this statement of Lieut. Langdon it is clear to your committee that he should not be held responsible for the lost money, as he used every means allowed him by the Government to protect and guard it. But the evidence filed in the case fully corroborates the statement of Lieut. Langdon. John Byrne, acting commissary sergeant, testifies as follows:

"I, John Byrne, acting commissary sergeant company L, 1st artillery, do hereby testify that, on the night of the 23d October, 1857, I went to bed about the hour of 11 o'clock of the aforesaid night, and

remained in bed until I was started out of sleep by an explosion which occurred about 12 or 12½ o'clock in the town of Brownsville. I dressed myself and went down town with a portion of my command to aid and assist in extinguishing the fire; also to save property with my fellow soldiers, who were also assisting to slacken the fury of the flames. I remained at work until about 3 o'clock, when a vague presentiment came into my mind, which at that time I could not account for. I came in from town and unlocked the commissary door, lit a candle, and remained about three or five minutes in the office. I saw everything undisturbed. I went to the fire again (locking the door after me) and remained there until there was about half an hour of light. I unlocked the door again and went to bed, being weary after the night's exertion. I did not look around in the office. I was about fifteen minutes in bed, when one of the soldiers called for me to get bread. I got up and unlocked the door and admitted him. I noticed some papers lying near the safe. On my approach thereto I perceived, also, a small drawer lying on the floor. The safe being mostly closed, catching hold of the knob and drawing the door open, I then saw the safe was robbed. In the aforesaid drawer I got fifty dollars in a small envelope. I picked up and fetched them to Lieut. Loomis L. Langdon, 1st artillery A. A. C. S., and reported the circumstances to him.

"JOHN BYRNE,
Acting Comm'y Sergeant Co. L 1st Art."

Sworn to and subscribed before me, at my office, on this 28th day of October, 1857.

GEO. DYE,
Mayor of the City of Brownsville.

At the request of Lieut. Langdon the commanding officer ordered a board of survey, composed of Surgeon William S. King and Captain Samuel K. Dawson, 1st artillery, "to examine minutely into the circumstances of the robbery." This board sat on the 25th of October, the day after the robbery, and after an investigation reported the facts substantially in every particular as stated by Lieut. Langdon and Sergeant Byrne. This finding was approved by F. Taylor, major and brevet colonel commanding. The evidence also shows that Lieut. Langdon did everything in his power to recover the stolen money, but failed; and he now asks to be relieved of the loss which stands charged against him at the Treasury Department. Your committee do not think that the same strictness should be observed towards officers upon whom responsibilities has been devolved without any agency upon their part, as towards those who enter the public service under an engagement to take charge of and protect the public money. In this case, however, the showing of Lieut. Langdon is very full, and in their opinion fully exonerates him from censure or responsibility, and they therefore report the accompanying bill for his relief, and recommend its passage.

JOSEPH McCLURE—ADMINISTRATOR OF.

[To accompany Bill H. R. No. 571.]

MAY 14, 1858.

Mr. GOODWIN, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the "petition of David McClure, administrator of Joseph McClure," have had the same under consideration and beg leave to report:

The annexed report from the Committee on Military Affairs explains the facts in relation to the recovery of the judgment against the said Joseph McClure in favor of the United States government. This report was accompanied with a bill refunding to the claimant the original amount of said judgment, which bill was passed by the 34th Congress. The amount of said judgment was paid to the said administrator, who now claims that he is entitled to receive the interest on the amount of the judgment he paid to the United States from the time he paid the same. While the committee have decided against allowing the claim for interest, they find that the judgment was collected by the government with interest, and that the United States received on said judgment *interest to the amount of \$107 64*, which interest, thus received by the government and paid by said McClure, has not been refunded. The committee believe that all of the money wrongfully collected on this judgment by the government should be refunded; that said interest should be paid to the estate of the said Joseph McClure; and they report a bill for that purpose and recommend its passage.

"Mr. WILLIAMS, from the Committee on Military Affairs, made the following report:

"The Committee on Military Affairs, to whom was referred the memorial of David McClure, administrator of Joseph McClure, praying the reimbursement of moneys paid by the said Joseph McClure, as paymaster of Colonel Warren's regiment New York militia, war of 1812, respectfully report:

"It appears from the evidence that Joseph McClure, as the paymaster of the said regiment, received money to pay off his regiment; that he

In regard to the interest, it is believed to have been settled by Congress, in its action on similar claims, that in cases where the amount due is clearly ascertained and admitted by the government, and payment is delayed for want of appropriation, it should be allowed.

It appears, from a statement of Colonel Abert, chief of the Bureau of Topographical Engineers, dated June 11, 1856, that this claim was then admitted to be due, and the committee have agreed that interest should be allowed from that date, and they report a bill accordingly.

ROBERT KIRKHAM.

MAY 14, 1858.

Mr. GOODWIN, from the Committee of Claims, submitted the following

REPORT.

The Committee of Claims, to whom were referred the petition and papers in support of the claim of Robert Kirkham, have had the same under consideration, and beg leave to report :

The petitioner claims damages for depredations committed by the troops of the United States upon petitioner's farm, "in the year 1837 or thereabouts." Petition alleges "that said troops mainly committed a great many depredations upon the property and stock of your petitioner in felling of timber, burning of rails, the destruction of growing crops, the removal of houses, the killing of cattle, hogs, and other stock." The evidence submitted in the case perhaps barely sustains the allegation of losses, but does not establish the fact that the depredations were committed by the government troops so as to make the government liable therefor. On this point the evidence is too slight and unsatisfactory, and your committee therefore report back the petition, and ask to be discharged from its further consideration.

CAPTAIN L. W. BROADWELL.

[To accompany Bill H. R. No. 372.]

MAY 14, 1858.

Mr. DAVIDSON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Lewis H. Broadwell, "praying for compensation for carrying the mails," have had the same under consideration and beg leave to report:

Captain Broadwell alleges that in the year 1854, being in command of the steamboat P. H. Kimball, plying as a regular packet between New Orleans and other points on the Mississippi river, as far up as Grand Lake, in the State of Arkansas, and finding that the residents at many landings and towns between Vicksburg and Grand Lake were without the means of mail communication, he did, at the request and urgent solicitation of the residents of the points mentioned, and for their accommodation and convenience, take on board his steamer and transport mails and mail matter, delivered to him for that purpose by the postmasters of Vicksburg, Milliken's Bend, Brunswick Point, Pecan Grove, Tullula, Lake Providence, Ashton, and Princeton; and that he generally paid the drayage on the mails to and from his steamer to the post office at Vicksburg, received and delivered there. This service, petitioner alleges, was continued, without intermission, from the 4th day of September, 1854, to the 17th day of April, 1857, when it was given up, and the Post Office Department employed Captain Porterfield, extending his contract to Napoleon. This service, Captain Broadwell alleges, was performed "under the employment of the postmasters at Vicksburg, Grand Lake, and the intermediate offices," but there being no contract with the government the Post Office Department is without authority to compensate him, and he asks remuneration at the hands of Congress.

Upon a very careful examination of the facts involved in this case, your committee find the declarations of the petitioner fully sustained by the evidence. Vouchers are filed showing the payment of various sums of money by Captain Broadwell for the drayage on the United States mails. These vouchers are in the following form:

VICKSBURG, *January 1, 1857.*

Received of Captain L. W. Broadwell twenty-five dollars in full for drayage on mails from post office to his boats and back.

\$25

WM. PORTERFIELD,
Mail Agent.

These vouchers show that the mails were regularly received and delivered by Captain Broadwell, and the drayage on them paid out of his own pocket.

The mail agent, Mr. Porterfield, and the postmaster at Vicksburg, give the following certificate :

" We, the undersigned, do certify that the statements in the memorial of Lewis W. Broadwell are true. We also certify that the service was of great convenience and utility to the residents of said points, who were, otherwise, without the benefit of regular mail communication."

This certificate is also signed by the postmasters at Pecan Grove, Tullula, and Providence, by several mail agents, and by a large number of citizens. Another memorial, numerously signed by the most influential citizens of Vicksburg, says :

" We, the undersigned, do hereby certify that the mail service, as set forth by Capt. Broadwell, was truly and faithfully performed by him with the steamers P. F. Kimball, Southern Bell, and Eclipse. We further certify that said mail service was performed at our earnest solicitation, and that being at that time otherwise without the usual regular and reliable mail communication with the various landings and towns between Vicksburg and Grand Lake, said service was of great value and importance to the commercial and planting interests. Said service was performed with as much good faith and regularity as if it had been given under contract."

This memorial is signed by all the leading merchants, planters, and business men of Vicksburg. The postmaster at Pecan Grove, says : " We had no regular mail facilities previous to the time Capt Broadwell commenced carrying it in the boat P. F. Kimball, in September, 1854. Previous to that time we were supplied irregularly, and frequently we had to send special agents to Vicksburg after the mail for this office at the expense of the citizens. Sometimes we had three weeks to elapse without any mail matter. The service performed was of considerable importance to this as well as other offices on the route." All the principal citizens of Pecan Grove join in a memorial stating about the same facts. The citizens of Lake Providence do likewise, and they all unite in asking that Congress should remunerate Captain Broadwell for services rendered the public.

Your committee have ascertained, from the department, that on the 20th September, 1850, the postmasters at New Orleans and Louisville were authorized to make up and forward mails by transient boats twice a week, but on the 26th of July, 1854, an arrangement was made with Mr. Porterfield to carry the mails twice a week between Vicksburg and Napoleon, (which is above Grand Lake,) supplying all the interme-

diate offices, at \$100 the round trip; and under this arrangement twelve trips were performed between July 26 and September 1, when Mr. Porterfield declined to continue the service because the compensation was insufficient. *This service was recognized by the department and paid for.* "You will perceive by this statement of facts," says the Postmaster General, "that there was no mail service by steamboat between Vicksburg and Napoleon from September, 1854, to 1st July, 1857, when a contract was made with W. Porterfield at \$20,000 a year for semi-weekly service." This is true, so far as *contract* service was concerned. The department had wholly neglected to provide proper mail facilities, and the citizens were forced to make provision for themselves. Porterfield threw up his arrangement for \$100 per round trip in September, 1854, and the next action of the department bears date on the 1st July, 1857. What were the people living on this route (known to be one of the most populous and business sections in the whole southwest) forced to do? Induce Captain Broadwell to supply them with the usual mail facilities and look to the justice of Congress to remunerate him and re-imburse the money actually paid out.

In the opinion of your committee it is very clear that this was a post route, and that the people were entitled to the ordinary mail facilities; that the department failed to afford these facilities directly by contract, but did so indirectly through the agency of its subordinates, the postmasters and mail agents on the line; that Captain Broadwell faithfully executed the service from September 4, 1854, to April 17, 1857, under authority of these subordinates, who were first directed to employ transit boats, then afterwards arranged with Captain Porterfield at \$100 the round trip; and that failing, engaged the services of Captain Broadwell, who continued in the public service more than two years and a half.

As a general rule, your committee are opposed to the policy of permitting the citizen to become the creditor of the government except under a legal contract with the proper department. Nevertheless cases may arise which should properly constitute an exception to that rule, and the case under consideration is clearly one of that class, and the only question to settle is the rate of compensation. The Postmaster General says:

"The pay for the semi-weekly service now under contract between Vicksburg and Napoleon, *via* Grand Lake, is \$20,000 a year; and the *pro rata* pay at that rate for semi-weekly service between Vicksburg and Grand lake, as nearly as can be estimated, would be \$10,000 a year."

As this contract commenced with the close of Captain Broadwell's services, it seems but fair that he should receive the *pro rata* compensation, and your committee therefore report the accompanying bill and recommend its passage.

THOMAS HASSAM AND B. S. BREWSTER.

[To accompany Bill H. R. No. 573.]

MAY 14, 1858.

Mr. DAVIDSON, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Thomas Hassam and B. S. Brewster, asking pay for services as local inspectors of steam vessels and boats at New Orleans, have had the same under consideration, and beg leave to report:

The petitioners were appointed inspectors of hulls and boilers, on the 3d day of December, A. D. 1852, under the 9th section of the act of Congress approved August 20, 1852. They immediately entered upon the discharge of their official duties, but neglected taking the oath required of them until the 12th day of May, 1853. The supervising inspector testifies: "That on the 3d day of December, 1852, Thomas Hassam and B. S. Brewster were designated as inspectors of hulls and boilers, and that immediately after their designation they went to work in discharge of the duties of the offices to which they had been designated, by preparing steamboats for inspection and other preliminary work." This statement is sworn to by Mr. P. H. Skipwith, supervising inspector. The treasury circular of July 20, 1829, says: "Compensation cannot be allowed until these requisitions (oath of office) are complied with." The account of petitioners was therefore rejected for the services rendered from December 3 to May 12 following, and it is for this compensation they now ask.

Your committee think it very clear that these inspectors are entitled to pay from the time they entered upon the discharge of their official duties, nor does the Treasury Department resist the claim as unjust, but only cut off by the official circular above quoted. Your committee therefore report the accompanying bill for the relief of the petitioners, and recommend its passage.

by any such arrangement, it appears that she did, in deference to the wishes and solicitation of the United States, forbear to assert her jurisdiction, even against trespassers, until the year 1839. It is for the losses of timber suffered during this period, from 1832 to 1839, and in consequence of an arrangement of this government suspending the jurisdiction of Maine, that the parties injured now ask compensation.

From public considerations connected with the peace of the country, their property was placed out of that protection of the laws which is the common right of all our citizens, and their claim to be indemnified for resulting losses would seem to be well founded.

The amount of their losses would seem, from the testimony, to have been larger than the sum proposed to be allowed them in the accompanying bill, with which sum, however, the commissioner of Maine has expressed himself satisfied.

In addition to the other testimony, the committee have been furnished with a copy of the report of N. C. Towle, who, under authority of the United States Senate, given in July last, made a personal examination on the spot of the facts upon which this case rests. The result of Mr. Towle's inquiries, very clearly stated by him, are appended to this report.

It appears that the half township known as the Eaton Grant, and the township known as the Plymouth township, were the only lands granted to individuals in that part of the so-called "disputed territory," from which the jurisdiction of Maine was ousted by the arrangement of 1832, until this jurisdiction was again successfully asserted in 1839. They are the only private lands, therefore, in respect to which a claim for the loss of timber can arise.

The testimony as to the extent and value of the lands belonging to individuals transferred to New Brunswick by the adoption of a new eastern boundary of Maine, commencing at the source of the St. Croix, is not sufficiently full and definite to justify a report upon that part of the memorial of the commissioner of Maine."

THOMAS S. SPRAGUE.

MAY 14, 1858.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Thomas S. Sprague, "praying that an allowance may be made for additional services as deputy marshal of the district of Michigan," have had the same under consideration and beg leave to report :

That it appears petitioner was in the employment of the United States in the year A. D. 1851, and whilst so employed performed certain services in connexion with the "timber depredations," in the northern part of Michigan. For these services he claimed the sum of \$212, and presented his account to Mr. Theodore Titus—then the government "timber agent" in Michigan—for payment. Mr. Titus declined paying it, and Mr. Sprague sought payment of the Interior Department; when being again denied payment, he sought relief of Congress, referring in his petition to his papers on file in the department. Your committee asked official information on the subject, and received the following reply :

GENERAL LAND OFFICE,
April 15, 1858.

SIR: In answer to the letter of the 3d ultimo of the Hon. S. S. Marshall, chairman of the Committee of Claims, referred to this office on the 14th inst., requesting to be furnished in regard to the petition of Thomas S. Sprague, late deputy marshal for Michigan, I have the honor to submit the following statement:

On the 27th February, 1855, the First Comptroller of the Treasury referred to this office the account of Mr. Sprague, at the instance of his attorney, M. Leamen, claiming \$212 for services "in looking after trespassers on the public lands." On examining the files, several letters relating to this claim were found as far back as 1851 and 1852, from Mr. Sprague, George C. Bates, late district attorney, and Mr. Titus, late timber agent for the State of Michigan; also an account of Mr. Sprague, claiming as due him the sum of \$191 03, *sworn to on the 7th February, 1852*. Attached to this account are several letters dated in August, 1851, from the United States marshal and Mr. Bates, addressed to Mr. Sprague on the subject of his duties, and confirmatory of his being in the employ of the United States.

The account referred by the First Comptroller to this office would have been audited at the time, but doubts arose as to the propriety of allowing it, from the tenor of a letter dated 22d January, 1852, written by Mr. Titus to the Solicitor of the Treasury.

Mr. Titus states that he had employed Mr. Sprague in the fall of 1851, and from the sales of timber sold by Mr. Sprague he (Sprague) received \$730, but had only accounted for \$480, leaving a balance against him of \$250. A letter, on the 10th May, 1855, was addressed to the attorney of Mr. Sprague, informing him of the statement made by Mr. Titus, and that explanations were necessary before the claim could be recognized.

In reply to this letter Mr. Sprague, on the 22d August, 1855, states, under oath, that he was employed by Mr. Titus, and had collected \$730, which sum he paid over to said Titus, deducting therefrom his compensation; that he is not now, nor never has been, indebted to the United States or its agents in the sum of a single dollar; that on the presentation of his claim for payment, he (Titus) refused to pay it, on the ground that he (Sprague) was "acting under the instructions of Mr. Bates" during the period of service claimed for.

Upon this issue, thus made by the parties, the claim was *suspended*, this office not undertaking to decide without further evidence.

It may be true that Mr. Titus refused payment on the ground alleged, yet the objection does not apply to the balance alleged to be retained by Mr. Sprague, as it does not appear that Mr. Sprague ever applied to Mr. Titus for payment *after* this balance had accrued. The claim he makes is for services rendered, in the employment of Mr. Bates, in the spring and summer of 1851. For these services he demanded pay of Mr. Titus, and which he refused to pay on the ground alleged. At the time of this demand, which was after Sprague's return in the spring, there was no balance or claim against Sprague. It was afterwards, in the fall of 1851, that Sprague collected the \$730, out of which the balance accrued of \$250. Had Mr. Sprague sought payment of Mr. Titus *after* the accruing of this balance, no doubt Mr. Titus would have apprised him of it, as an offset to his claim.

The preceding is a summary of the facts bearing on the subject of inquiry, and contains all the information within the control of this office. Copies of two letters written by Mr. Bates, conflicting with the certificates given by him and appended to the account, are submitted, as they show that the claim of Sprague had been a matter of consideration by himself and Mr. Titus.

Respectfully, sir, your obedient servant,

THOMAS A. HENDRICKS,
Commissioner.

Hon. JACOB THOMPSON,
Secretary of the Interior.

In the opinion of your committee this report completely disposes of this claim, and shows that it remains properly "suspended" in one of the executive departments, for reasons given by the Commissioner. Your committee, therefore, report back the petition to the House, and ask to be discharged from its further consideration.

GEO. A. O'BRIEN,

[To accompany Bill S. 92.]

MAY 14, 1858.

Mr. MAYNARD, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate bill No. 92, "for the relief of George O'Brien," have had the same under consideration, and beg leave to report:

This claim has been twice examined and reported on favorably in the Senate of the United States, on the 16th of January, 1857, and again on the 26th of January, 1858. Since the case has been before your committee additional evidence, in the nature of an official letter from the Second Auditor of the United States Treasury, has been received and filed with the papers, and attached to and made a part of this report, as exhibit A, corroborating the testimony as presented before the Senate. Your committee therefore adopt the following report of the Senate, and make the same the report of this committee. They also report back the Senate bill without amendment, and recommend its passage.

EXHIBIT A.

IN THE SENATE, *January 16, 1857.*

The Committee of Claims, to whom was referred the petition of George A. O'Brien, report:

The petitioner alleges that, during the year 1845 and a portion of 1846, he was clerk for the Chickasaw Indians, by virtue of a treaty stipulation and an appointment authorized by the President, at a salary of \$600 per annum, payable out of the "Chickasaw fund." He was located for the performance of these duties in the Second Auditor's office. About one-third of his time was occupied by the Chickasaw business. The clerical force of the Second Auditor being insufficient at the time to keep up the business, Mr. O'Brien was directed to devote that portion of his time not required by the Chickasaw business to the examination and adjustment of accounts in the

Auditor's office. He says he was constrained to submit to this requirement of the Auditor, or be deprived of his Chickasaw clerkship.

For this service in the Auditor's office, to which he says he devoted two-thirds of his time, he claims two-thirds the rate of pay then allowed to temporary clerks on similar duty, to wit, \$2 66 per day, for 206 days, amounting to \$549 38.

It appears from the "act for the relief of Sayles J. Bowen," (9 Stat. 810,) that the successor of Mr. O'Brien has been paid for like services.

Mr. Polk, who was the chief clerk in the Second Auditor's office at the time, deposes to the truth of the facts stated in the petition.

Under these circumstances, the committee report a bill for the payment of the account.

RUFUS DWINEL.

[To accompany Bill S. 189.]

MAY 14, 1858.

Mr. JOHN C. KUNKEL, from the Committee of Claims, made the following

REPORT

The Committee of Claims, to whom was referred Senate bill 189, for the relief of Rufus Dwinel, have had the same under consideration, and beg leave to report :

This is a claim for an amount as interest found due Rufus Dwinel, by a jury at the March term, 1841, of the circuit court of the United States for the District of Columbia. As your committee approve of the report made by the Committee on Claims in the Senate, which states clearly and briefly the facts, they hereby adopt it as their own.

The Committee on Claims, to whom was referred the petition of Rufus Dwinel, submit the following report :

The petitioner has legal title to the amount which was due to James Thomas under a contract with the Post Office Department, duly executed and under seal.

The question of how much was due under said contract was adjudicated and tried before the circuit court of the United States for the District of Columbia, at the March term, 1841. Upon the testimony produced by the parties and the argument of counsel for the contractor and the government, the jury returned a verdict in favor of the said James Thomas, or his surviving partner, for \$13,037 22, with interest thereon from the 4th March, 1837, the time when the service under the contract was completed, and the amount was all due and payment demanded; and the same verdict was so recorded, and judgment not appealed from. That it does not appear that either the counsel or court suggested to the jury that it would be more proper to include the interest, and return a verdict for a sum which would include both principal and interest as the amount of the damage awarded by them as declared by the verdict, as is customary in such cases.

A certificate of nine of the jurors, signed after the rendition of this verdict, declare, that the jury were unanimous in their judgment upon

the matter, and that they supposed that both principal and interest would be paid, as therein declared.

The principal was paid under an act of Congress, approved March, 1852, and the petitioner prays for the payment of the interest from the 4th of March, 1837, according to the verdict of the jury; and the committee herewith report a bill for his relief for the amount of interest to the time when the principal was paid, according to the verdict of the jury, and recommend its passage.

Your committee report back the Senate bill without amendment and recommend its passage.

JONAS P. KELLER.

[To accompany Bill S. 67.]



MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred Senate Bill No. 67, for the relief of Jonas P. Keller, have had the same under consideration, and beg leave to report :

Your committee were well satisfied, from the evidence filed in the case, that Mr. Keller discharged the duties for which he asks compensation ; but they nevertheless addressed a note asking for official information, to which Colonel H. K. Craig, colonel of ordnance, replied through the honorable Secretary of War, as follows :

“ I have to state that it is well known to all who then occupied rooms in the Winder Building, that Mr. Keller acted in the capacity and rendered the services for which he now asks compensation. Mr. J. D. McPherson, whose letter forms a part of the memorial, and to whom was assigned the duty, as he states, of having the building properly taken care of, was then a clerk in the office of the Secretary of War, and is now deputy solicitor of the Court of Claims, and his statement is entitled to full credence. I consider the claim just and equitable. The letter from the Committee of Claims, with the accompanying papers is herewith returned.

Respectfully, your obedient servant,

H. K. CRAIG,
Colonel of Ordnance.

Hon. J. B. FLOYD,
Secretary of War.

Your committee, therefore, adopt the following report from the Committee on Claims in the Senate, and report back the Senate bill, without amendment, and recommend its passage.

IN THE SENATE OF THE UNITED STATES, *January 10, 1858.*

Mr. IVERSON made the following report.

The Committee on Claims, to whom was referred the memorial of Jonas P. Keller, report:

In 1849, as it appears from the memorial and papers in this case, the executive building at the corner of F and Seventeenth streets was occupied by various bureaus of the Treasury, War, and Interior Departments, but no legal provision existed for the superintendence and care of the building. Under these circumstances, the Secretaries of those departments authorized Mr. McPherson, a clerk in the War Department, to take charge of the building as acting superintendent, who immediately devolved the duty of the care and oversight of the daily police of the place upon the memorialist, who performed the service (as Mr. McPherson and others certify) until the act of 27th of February, 1851, which provided watchmen for the building, took effect.

From the appropriation made by that act Mr. Keller received a compensation for his services at the rate of \$500 per annum, subsequently to 1st October, 1850, but no means were provided for paying for the service rendered between 1st April, 1849, when his duties commenced under the authority derived from the heads of the several departments, and the 1st October, 1850, and it is for this period that compensation is now claimed.

The act of 1850, (9 Stat., 542,) which prohibits the accounting officers from allowing to one individual the salaries of two different offices, expressly provides that "this prohibition shall not extend to the superintendents of the executive buildings."

Believing the claim, to the extent above indicated, to be just, the committee report the accompanying bill, and recommend its passage.

ISAIAH WOODWARD.

MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following
REPORT.

The Committee of Claims, to whom was referred the petition of Isaiah Woodward, praying for relief on account of the seizure and sale of a vessel and cargo in 1822, have had the same under consideration, and beg to report:

That evidence shows that the sloop "Thomas and Eliza," of Boston, bound from Martinique to Washington, in the State of North Carolina, was seized, with her cargo, and libeled by the government of the United States and sold. The proceeds of the sale, after paying \$192 49 costs, and deducting the legal duties, amounting to \$, were paid into the hands of the register of the court. Of the goods sold, one Daniel King claimed three hogsheads and forty barrels of molasses. Upon an appeal being taken to the President of the United States, that functionary gave the following order:

"Let the penalty be remitted without costs;" and "Let the costs in the case be charged to the United States on account of the peculiar hardship of the case."

Under this order of the President, the proceeds of the sale of the sloop and cargo were paid to the owners of the same, and the records of the United States court show the two following receipts:

NEWBERN, *January 20, 1823.*

Received of Jeremiah Brown, register of the court of admiralty for the district of Pamlico, \$299 79, being part of the cargo of the sloop Thomas and Eliza, owned by Daniel King, deceased, and Isaiah Woodward.

ISAIAH WOODWARD,
SIMEON CRUTHERS,
Administrators of Daniel King, deceased.
By ROBERT SPEIR, *Attorney.*

NEWBERN, *November 14, 1827.*

Received of Jeremiah Brown, register of the court of admiralty for the district of Pamlico, \$135 64, being in full of the cargo of the sloop

Thomas and Eliza, owned by Daniel King, deceased, and Isaiah Woodward.

ISAIAH WOODWARD.
By WT. C. STANLY.

Here your committee find for the first time the name of petitioner connected with this case. Daniel King claimed the goods in his own name ; he defended the suit in his own name, and in his own name he appealed to the President for relief. The only evidence outside of these receipts (which were given after Mr. King's death) is the affidavit of a person representing himself to have been a clerk in the counting-house of King & Woodward. He testifies that Isaiah Woodward was interested in Daniel King's part of the cargo. But your committee do not consider it sufficiently established that petitioner had any claim whatever upon the part of the cargo seized and sold as the property of Daniel King. Nevertheless, if this point was perfectly clear, the facts show that petitioner is not entitled to relief. The sale of the sloop and cargo took place on the 15th July, 1822, and the President's order to remit the penalty was dated on the 18th day of September following. The petitioner bases his application on the ground that the President's order was for "a restoration of the property seized," when it was only for a remission of the penalty, which was a forfeiture of the proceeds of the sale. The records show that Mr. Woodward not only received his part of the net proceeds of the sale, but was also refunded the costs. Your committee, therefore, report back the petition of Isaiah Woodward and recommend that it be not granted, and they ask to be discharged from its further consideration.

CHARLES H. VENABLE.

MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Charles H. Venable "for difference of pay between a night watchman and a first class clerk in the Pension Office," have had the same under consideration and beg leave to report:

The claimant shows that he received an appointment as night watchman in the Pension Office, at an annual salary of six hundred dollars, and whilst so employed and paid he discharged the duties of messenger. This is shown by the official letter of the Commissioner of Pensions. There was no double service. The duties performed by him were, by mutual arrangement, discharged in lieu of those more appropriately belonging to his office. He never performed the duties of night watchman for which he received his pay; nor is there any evidence that claimant ever discharged the duties of clerk. He is clearly not entitled to the relief asked. Your committee, therefore, report the petition back to the House, and ask to be discharged from its further consideration.

the same time, the fact that the same person can be both a subject and an object of a relation, and that the same relation can be both a subject and an object of a relation, is a fact that is not captured by the traditional logic of categories. This is why the traditional logic of categories is inadequate for the study of the social sciences. The traditional logic of categories is a logic of static relations, while the logic of the social sciences is a logic of dynamic relations. The traditional logic of categories is a logic of the individual, while the logic of the social sciences is a logic of the social. The traditional logic of categories is a logic of the past, while the logic of the social sciences is a logic of the future. The traditional logic of categories is a logic of the known, while the logic of the social sciences is a logic of the unknown. The traditional logic of categories is a logic of the finite, while the logic of the social sciences is a logic of the infinite. The traditional logic of categories is a logic of the concrete, while the logic of the social sciences is a logic of the abstract. The traditional logic of categories is a logic of the particular, while the logic of the social sciences is a logic of the universal. The traditional logic of categories is a logic of the specific, while the logic of the social sciences is a logic of the general. The traditional logic of categories is a logic of the individual, while the logic of the social sciences is a logic of the social. The traditional logic of categories is a logic of the past, while the logic of the social sciences is a logic of the future. The traditional logic of categories is a logic of the known, while the logic of the social sciences is a logic of the unknown. The traditional logic of categories is a logic of the finite, while the logic of the social sciences is a logic of the infinite. The traditional logic of categories is a logic of the concrete, while the logic of the social sciences is a logic of the abstract. The traditional logic of categories is a logic of the particular, while the logic of the social sciences is a logic of the universal. The traditional logic of categories is a logic of the specific, while the logic of the social sciences is a logic of the general.

BAILEY & DELORD.

MAY 14, 1858.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of William Bailey and Henry Delord, formerly merchants and partners selling goods in Plattsburg, New York, "praying compensation for merchandise furnished the soldiers stationed at Plattsburg in 1814-'15," have had the same under consideration and beg leave to report:

The claim of the heirs of Michael Johnson, reported on *adversely* by your committee, was one, in every respect, similar to the claim of Bailey & Delord, which has been before Congress for the last twenty-five years. The evidence shows that Bailey & Delord furnished a large amount of merchandise to the officers and soldiers of the United States army, upon the assurance of the officers that they should be paid so soon as the troops received their money. The credit was evidently given the men, though induced by the personal assurance of the officers that they would aid in securing payment. The amount furnished is not established by satisfactory evidence, nor is it shown how much was eventually paid for by the soldiers. Estimates are made by one or two witnesses, but not based upon any *data*. The papers of Bailey & Delord are proven to have been destroyed by fire in 1825. But your committee believe that if the amount could be accurately ascertained, it would still be no claim against the government. As was shown in the case of the heirs of Michael Johnson, "the troops were supplied with rations not by commissaries, but by contractors; and that for supplying the troops in the portion of the State of New York wherein Plattsburg is situated, from the 1st June, 1814, to the 31st May, 1815, William D. Cheever was the contractor, and on file with his accounts there are found to be regularly certified monthly abstracts of issues of complete rations to the troops at Plattsburg for the whole time."

On the 10th of April, 1840, Mr. Hubbard reported from the Committee of Claims as follows:

"The Committee of Claims, to whom was referred House bill No. 43, 'for the relief of William Bailey, survivor of Bailey & Delord,' report:

"That the claim in this case, and the evidence upon which it rests, are fully set forth in the printed reports accompanying the bill. After

a careful examination, your committee can see no reason for allowing any part of the petitioner's claim. They cannot recognize any justice in the principle upon which its payment is advocated—that the United States are bound to make good to individuals losses which they may have sustained by extending credit to the officers and soldiers of the army. The risk of non-payment for the credits given in this case belongs exclusively to the petitioners, and the profits charged were, or ought to have been, commensurate with the risk. Although the practice has not been entirely uniform, the United States have in some instances heretofore refused to make remuneration to sutlers for losses incurred by trusting soldiers in the army, and have declined to pay them the wages due to soldiers who had deserted, died, or were discharged, in their debt. Much less can it be expected that they should make up, after the lapse of more than twenty years, the losses sustained by individual creditors, in no way connected with the police of the army, or subjected to its regulations. They therefore recommend the indefinite postponement of the bill."

Your committee, concurring fully in the above report, report back the said petition to the House and ask to be discharged from its further consideration.

R. A. DAVIDGE.

[To accompany Bill H. R. No. 575.]

MAY 14, -1858.

Mr. S. S. MARSHALL, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to whom was referred the petition of Robert A. Davidge, "praying compensation for services as clerk in the Treasury Department," have examined the same and beg leave to report:

They find that the claimant was employed in the office of the First Comptroller of the Treasury, by the order of the Secretary of the Treasury, as a temporary clerk for thirty-six days, at the rate of pay of \$1,200 per annum. The act of 1842 prohibits the employment of temporary clerks during the recess of Congress, except for specified purposes therein named; and hence Mr. Davidge was refused his pay, though the Comptroller, Mr. Whittlesey, certified that he performed the duties. The claimant unquestionably performed the service, and is entitled to the pay, amounting to \$118 90, and your committee report a bill accordingly and recommend its passage; but at the same time they feel compelled to say that they cannot approve of the act of the public officers who employed Mr. Davidge, in violation of existing law.

CAPTAIN DOUGLASS OTTINGER.

[To accompany Bill H. R. No. 576.]

MAY 14, 1858.

Mr. E. B. WASHBURN, from the Committee on Commerce, made the following

REPORT.

The memorialist, Capt. Douglass Ottinger, of the United States revenue service, represents that he is the sole and original inventor of the machine known as life or surf car, and that it was the first invention whereby persons could be safely conveyed *through* heavy breaking waves from stranded vessels to the shore. He submits that he has voluntarily placed his invention at the life-saving stations of the United States, subject to the free use of the government, unrestricted by patent rights. He asks some remunerative compensation for the labor and expense which the inventions have cost him, and also something, in addition, to enable him to test practically, at sea, its adaptation to rescue passengers and crews during violent gales.

The committee are satisfied that Capt. Ottinger is the original inventor of the life or surf car, and that he has devoted the same to the use of the United States, and that the government is now using them at fifty-two different stations on the coast. The evidence before the committee is conclusive as to the great value of the invention of Capt. Ottinger as a means of saving life. The present Secretary of the Treasury, the Hon. Howell Cobb, in answer to a letter from the committee, says "it has proved of incalculable value in the saving of human life;" and he mentions the case of the wreck of the ship "Ayrshire," on the Jersey coast, (when it was impossible for any boat to reach her in consequence of the heavy surf rolling in upon the beach,) where, by means of this invention, every one on board was saved—men, women and children, and even infants in their mothers' arms.

As Capt. Ottinger, with a laudable public spirit, has for many years devoted his valuable invention to the use of the United States, and has received no compensation therefor, your committee deem his claim for some remuneration not unreasonable. They are prepared, therefore, to recommend the passage of a bill granting him an amount not only as a remuneration for the use of his invention, but to enable him to make some further experiments to test its practicability in rescuing passengers and crews during violent gales at sea.

A.

GENTLEMEN: In submitting to you a claim for remunerative compensation as the inventor of the "life or surf car," and other parts of an apparatus in use at fifty-two life-saving stations established by acts of Congress, I take the liberty to transmit the accompanying documents, numbered from 1 to 17, which I hope will show to your satisfaction that I am the inventor of the surf-car and *spiral wire*, for overcoming the *vis inertia*, and fastening the line to the shot, as well as to give evidence of its capability to rescue passengers and crews from vessels wrecked near the shore.

I now design to extend the effectiveness of the apparatus to the shipwrecked on the open sea, in such and similar cases as steamers "San Francisco" and "Central America," and trust that the circumstance of having already been instrumental in producing a reliable means of overcoming the dangers of the heaviest breaking waves, will obtain for me your favorable consideration to my proposition for saving life on the ocean.

I ask for such compensation as you may deem just and proper to remunerate me for the past, present and prospective use of my invention by the United States at such stations on shore as the proper authority may determine will be likely to benefit the cause of humanity, as well as for the unlimited use of the same in the naval service, transport and other vessels of the army, revenue service, coast survey and lighthouse vessels, and such of the merchant marine as may be temporarily in government employ. I append the following instances where compensation has been given to inventors by Congress:

To the inventor of chloroform, \$100,000; to experiments on Morse's telegraph, \$48,000; to experiments of Doctor Page, in the application of electricity as a motor, \$24,000; to the heirs of Fulton, ———.

As it is yet to be established that my apparatus can be successful in storms on the ocean, I rely on the intelligence of your committee to appreciate the fact that it has actually been successful on the strand, and, therefore, beg you will sanction, in addition to any compensation, an appropriation of \$5,000 to enable me to test practically, at sea, its adaptation to rescuing passengers and crews during violent gales.

I am, very respectfully,

DOUGLASS OTTINGER,

Captain United States Revenue Cutter Service.

Hon. JOHN COCHRANE,

And members of Committee of Commerce,

House of Representatives.

B.

TREASURY DEPARTMENT,

April 27, 1858.

SIR: I acknowledge the receipt of your letter of 10th instant, enclosing, by direction of the Committee of Commerce, the petition of Captain Douglass Ottinger, and requesting to be informed if any of

the "surf-cars" claimed by him to be his invention are in use by the government, and if so, how many, and whether or not his apparatus be deemed a valuable one, &c., &c., and, in reply, have the honor to say, that, in obedience to authority vested in this department by certain acts of Congress, there have been established, and are now in operation, fifty-four life-saving stations on the coasts of New Jersey and Long Island—twenty-eight on the former, and twenty-six on the latter coast—which have been provided with the necessary appurtenances for the saving of human life from shipwreck, including both a life-boat and life-car, at each station.

The duty of locating the first eight stations between Sandy Hook and Egg Harbor was assigned to Captain Ottinger of the revenue cutter service, who caused the houses to be constructed and the requisite apparatus to be provided therefor, as will be seen on reference to the report of that officer to this department, under date of 21st May, 1849, a copy of which accompanies this communication. The six succeeding stations, established between Little Egg Harbor and Cape May, was entrusted to 1st Lieutenant John McGowan, of the same service, who acted as the agent of the department in procuring the required apparatus for the same, a copy of whose report, under date of November 4, 1849, is herewith transmitted. The remaining fourteen stations on the coast of New Jersey, and the twenty-six on the coast of Long Island, have been established at different times, under the superintendence of Messrs. Edward Watts, Samuel C. Dunham, and J. N. Schellinger, and the necessary apparatus provided therefor.

In answer to that part of your letter as to the valuableness of the apparatus, I have to say, that in many instances, where it has been brought into service, it has proved of incalculable value in the saving of human life. In one instance alone, in a terrific snow-storm on the coast of New Jersey, in January, 1850, the life-car at one of the government stations on that coast succeeded in saving from the wreck of the ship "Ayrshire," (when it was impossible for any boat to reach her, in consequence of the heavy surf rolling in upon the beach,) every one on board, two hundred in number, consisting of men, women, and children, even infants in their mothers' arms—a description of which, will be found in the work on life-boats and life-cars, published by Francis' Metallic Life-boat Company, of New York. The life-boat has proved equally successful in many instances, not deemed necessary here to enumerate.

The department, in bearing testimony to the great value of the apparatus for saving of human life from shipwreck, in use at the government life-saving stations on the coasts of New Jersey and Long Island, takes the occasion to say, that it proposes no means of information, beyond what is furnished by the two accompanying reports, as to who is the inventor of the "life-car" in use at the government stations referred to. Those cars which were furnished the stations first established by Captain Ottinger, in 1849, were provided by that officer, under the general instructions of the department to procure the best means of saving life and property from shipwreck. In like manner, Lieutenant McGowan procured those which were furnished the stations established under his superintendence. Those provided the

government stations subsequently established were procured by the department, direct, of Mr. Joseph Francis, of New York, who, it was understood, was the constructor of those cars in use at the stations previously established by Captain Ottinger and Lieutenant McGowan. The petition of Captain Ottinger is herewith returned.

I am, very respectfully,

HOWELL COBB,
Secretary of the Treasury.

Hon. E. B. WASHBURN,
*Of the Committee on Commerce,
House of Representatives.*

C.

PHILADELPHIA, *November 4, 1849.*

SIR: I have the honor to report that the duty assigned me, of carrying into effect the act of Congress for the preservation of life and property from shipwreck between Little Egg Harbor and Cape May, coast of New Jersey, is completed, and I respectfully beg leave to offer the following report:

In obedience to the orders of the committee of the Board of Underwriters of Philadelphia, I proceeded to the coast, and selected six points (all of them on islands, except Cape May,) as the most suitable for stationing the apparatus, all of which places were approved by the committee. At each station there is constructed a frame boat-house, 29 by 16 feet, sufficiently large to contain the surf-boat, life-car, wagon, and all the apparatus, besides plenty of room for crews of wrecked vessels. The houses were built by Messrs. N. & S. Middleton, of this city, and are of the best material. They are located as near the beach as the safety of the building would admit, and are perfectly secure from any storms that may occur. They are erected upon locust and cedar piles, six feet long, and buried five feet in the ground, and securely trenailed to the piles with locust trenails $1\frac{1}{2}$ in. diameter. They are well painted with two good coats of white lead, and the roofs well covered with red ochre and tar. The ropes were made (by Messrs. George J. Weaver & Co., of this city,) according to the recommendation of Captain Ottinger—that is, spun in very fine yarn, like whale line or bolt rope. The yarns coated with a light coat of tallow, and laid slack, thereby making it float light and very pliable in cold weather, and not apt to kink. The boats and life-cars were built by Mr. Francis, of New York, and are the same as those built for, and recommended by, Captain Ottinger, with an important improvement of covering the whole inside bottom with galvanized iron and securing it to the wooden bottom, thereby making the boat perfectly secure and not liable to leak, should the wood become rent or cracked from hard usage. To show the capability of the boats, I will mention that I landed in one of them, on Cape May, while blowing a double reef breeze, with considerable surf on the beach, and had in the

boat all the life-saving apparatus for the Cape May station, weighing full two thousand pounds, and five men, and landed the whole in safety.

At each of the stations I have placed everything in proper order in the boat-houses, and left with the persons having charge a card of printed directions how to use the apparatus; and in order to give them confidence in the use of it at each place, I fired off a rocket and shot out of the mortar with the lines attached, and was very successful in carrying the lines to the point designated. Those persons who witnessed the experiment feel satisfied that they can now throw a line to a stranded vessel (if not over three hundred yards from the beach) when it is impossible for a boat to venture off.

As the persons who have charge of the apparatus receive no compensation for taking care of it I am fearful some of them will neglect keeping it in proper order. I would respectfully recommend that the commander of the Forward be instructed to visit some of the accessible stations occasionally, to see that everything is in good condition. I am much indebted to H. C. Holmes, esq., collector of the Great Egg Harbor district, for assisting me in selecting the locations, procuring the deeds from the owners of the land, and rendering me much valuable assistance, being perfectly acquainted with the coast, and having the confidence of the board of underwriters. I have given him the keys of two of the houses nearest his dwelling, and have requested him to assume the general superintendence of the whole line, (except Cape May,) until further orders from the government.

I herewith transmit the deeds for the land, receipts for the articles furnished each station, and a printed list of all the articles; also a deed and receipt left by Captain Ottinger. The names of the stations are as follows:

Brigantine Beach, about midway.

Absecum Beach, opposite Ryan Adams.

Peck's Beach, east end.

Ludlum's Beach, west end.

Five-mile Beach, east end.

Cape May Beach, light-house.

There has been expended, as per bills in the hands of the board of underwriters, the sum of \$8,364 67, which has provided everything that was supposed useful or necessary.

I am, very respectfully, your obedient servant,

JOHN N. TONER,

First Lieutenant U. S. Revenue Marine.

Hon. W. M. MEREDITH,

Secretary of the Treasury, Washington.

D.

NEW YORK, May 21, 1849.

SIR: I have the honor to state that the duty assigned to me, by order from the department of October 18, 1848, for carrying into effect the

law of Congress for the preservation of life and property from shipwreck on the coast of New Jersey, between Sandy Hook and Little Egg Harbor, has been performed, and I respectfully beg leave to offer the following report:

The committee appointed by the Board of New York Underwriters, at the request of the Secretary of the Treasury, and by whom I was advised, selected, as proper places for surf-boat stations, eight points between Sandy Hook and Egg Harbor, and at each there has been constructed a frame boat-house, 28 feet long and 16 feet wide in the clear, containing all the articles as per receipts herewith enclosed.

The galvanized iron surf-boats were adopted on account of their durability, and not being likely to need repairs for a long time. This kind of boats are coming into use very fast, and I think them peculiarly suited to surf-boat stations, as they are not liable to become leaky, and therefore always ready for use. The boats which are at the several stations have a floating power which will sustain 15 persons when they are full of water.

The "life-cars" are also made of metal, with air chambers of the same material, and, in addition, are fitted with the India rubber floats and fenders invented by General Santon, United States army. These "cars" are constructed on the principle of a buoy, and intended to pass *through* the surf when the surfmen dare not venture off. They are to be hauled to and from the stranded vessel by means of "hauling lines" attached to each end, and are protected from injury by contact with the ship's side by the inflated floats; these were adopted by R. B. Forbes, esq., to give the boats constructed by him for the Massachusetts Humane Society the essentials of life-boats; and I would here respectfully remark, that I believe these fenders could be applied to the boats of the revenue cruisers with great effect, as they would not only give the men and officers increased confidence in boarding vessels at sea when on "relief duty," but would protect the boats from being injured by contact with the vessel's side, and keep them fit for service much longer than they would be without such protection.

The rockets, with which the stations are furnished, were imported by R. B. Forbes, esq. The largest are 6 pounds, and will carry out 270 yards of line, weighing nine-tenths of an ounce per yard; the cost of each is about five dollars. With the *mortar and shot*, using five ounces of powder for a charge, I have thrown out 320 yards of the same line; rockets have generally been preferred on account of not breaking the line, as their motion is an accelerated one.

The shot, on the contrary, has its greatest velocity at the moment its action is felt upon the line, which has been a great objection to using the "cannonade." This difficulty has been completely overcome, so far as we have tried it, by putting three small turns of small soft wire through the eye of the shot, with five or six spiral turns just outside of the muzzle.

I have recently been at each of the stations, and delivered all the articles in safety, and instructed the persons in whose charge they were left in the mode of using them, and left with each a card of printed directions, a copy of which I herewith enclose. I am appre-

hensive that it may appear to the head of the department that much time has been occupied in bringing this duty to a close ; but I would respectfully state, in explanation, that, notwithstanding the high intelligence of the committee, and the valuable information which I received from them, yet there was much that we required which could only be obtained by experiment, and frequent alterations and delays were unavoidable. As it was of much importance that the apparatus should be reliable, all the articles, except the life-cars, have been practically tested, and these are approved by most of the intelligent surfmen, and also by Mr. Francis, boat-builder, at the Novelty Works, who has spent much time in obtaining information on the subject of life-boats and life-saving apparatus ; and we availed ourselves of his experience in constructing them.

As the efficiency of the apparatus at the surf-boat stations depends almost entirely on the projectiles being kept in proper condition, and the persons in whose charge they are left receive no compensation, and can seldom spare the time necessary to keep them in good order, I would respectfully propose that the commanders of revenue vessels, within whose cruising limits the stations are, should visit them once every two months and examine the apparatus, with the person having charge of the same, and have the *mortar* and *shot* cleaned, and the lines recoiled. The individuals in charge of the boat-house, and the people generally along the coast, appear to feel much interest in this matter, and, I believe, will exert themselves to make it useful.

I have the honor to transmit herewith the deeds for the land on which the boat-houses stand, and six receipts for the articles furnished for each station. There are two others, which were left to be signed, as the heads of the families were absent from the stations. There has been expended, as per bills transmitted to the department, nine thousand eight hundred and forty-eight dollars and sixty-one cents, which has provided the eight stations with all that was supposed would be necessary or useful.

I am, sir, very respectfully, your obedient servant,

D. OTTINGER,

Captain U. S. R. Marine.

Hon. W. M. MEREDITH,

Secretary of the Treasury.

E.

Escape from Shipwreck.

THE GOVERNMENT APPARATUS,
Long Beach House, December 7, 1852.

DEAR SIR : I had an opportunity of testing the government apparatus for saving life from shipwrecked vessels on Saturday last.

The ship *Georgia*, Captain Brodie, with 271 passengers on board, came on shore on Friday evening last, the wind blowing nearly a gale,

and the weather so foggy that the breakers were not seen till she was hard aground, with the wind on shore. So thick was it that she was not seen from the shore till eleven o'clock in the day, although she lay within a quarter of a mile of the house in open sight.

I happened at the time to have a good set of men in my employment—carpenters and others—and immediately, on the discovery of the accident, went with my men and team to the government boat-house, took the necessary apparatus, and reached the beach with it, all in half an hour. The sea was so high that she could not be boarded, and I used the mortar for sending the line on board, and succeeded, at the first shot, attaching the larger line to the bow of the ship. This line was then fastened to the forward part of the "surf-car," and another to the stern. I sent her in that manner, through the surf, to the ship, and back, till all the passengers and crew were landed, without the least bruise or scratch to any one.

I am exceedingly gratified with the result. The arrangement of boats on the beach is a most humane provision, and will save a vast amount of life every year.

I regret to say that the small lines were cut to pieces, and will need to be replaced by new. My time is fully occupied in providing for the large number of passengers, and I have no leisure to write any more.

I have not been over to the ship since the crew landed, but it is reported that the boat is somewhat injured, and I apply to you to assist me to have everything in order again as soon as possible. I enclose you the names of those engaged in rescuing the people, and remain

Yours,

THOS. BOND,

Long Beach, Little Egg Harbor.

WALTER R. JONES,

President of the Life-Saving Benevolent Association.

Amos B. Brown, Henry Stephens, John Cramer, Eben Stevens, Benjamin Gifford, William G. Crane, Peter —, Captain John Crawford, William Helly, and crew of schooner Mary Kelly.

F.

UNITED STATES STEAMER MICHIGAN,
Erie, December 3, 1857.

The undersigned officers of the navy, now attached to the steamer Michigan, have carefully examined a miniature model of a surf-car, together with its accompanying apparatus, of mortar, &c., invented by Captain Douglass Ottinger, of the United States revenue service, and, so far as they are able to draw just conclusions without experimental proof, they take pleasure in expressing the opinion that the invention in question seems capable of successful application to the

object designed, viz : the rescue of passengers and crew from a sinking ship at sea, and they believe that its merit entitles it to the favorable consideration of the government.

C. H. McBLAIR, *Commander*.
 J. H. SPOTTS, *Lieutenant*.
 J. W. McCLELLAND, *Surgeon*.
 A. J. MITCHELL, *Purser*.
 JAMES E. JENETT, *Lieutenant*.
 R. B. LOWREY, *Lieutenant*.
 SAM. McGAW, *Lieutenant*.

G.

HOUSE OF REPRESENTATIVES, U. S.,
 January 12, 1849.

DEAR SIR : At the last session of Congress I had the honor to introduce and get through a proposition to make an appropriation of \$10,000, to be expended on the coast of the district which I represent. I have been informed that you have the superintendence of expending the amount. I have introduced similar propositions in the present session, to be expended in the remnant of my State, (New Jersey,) and also on a great portion of the Atlantic coast of Long Island. I shall make some remarks on the subject, and wish to know, so that I may make them more interesting, what you have done. Please say, also, if you approve of the plan which I suggest in my proposed remarks, a copy of which I herewith send to you, and if you design in any measure to carry out my suggestions. I should also like to know, if it be agreeable to you to inform me, what principle you design to adopt in relation to selecting individuals to whom these boats are to be entrusted

At the last session of the 29th Congress an appropriation of \$5,000 was made to be expended at the light-houses, for the purpose of providing means for saving life and property, which has not been used as yet. Cannot this sum be added to the \$10,000, and thus enable you to carry out your views on a more extensive and satisfactory scale?

I am, sir, with much respect, truly yours,

WILLIAM A. NEWELL.

Capt. OTTINGER,
United States Marine Revenue.

H.

Extract of letter in reply to one from Hon. W. A. Newell, M. C., House of Representatives January 12, 1849.

NEW YORK, January 16, 1849.

DEAR SIR : I take much pleasure in giving you information on the subject of your letter ; and although it may appear that we have not

progressed rapidly, yet we have been constant in our efforts to bring the matter to good account, and have called to our assistance several of the most intelligent surfmen along the coast, who have selected a boat as a model by which those provided for in the appropriation are to be constructed.

We have selected eight stations on the beach, within the limits embraced in the law "for the preservation of life and property from shipwreck on the coast of New Jersey," and design to have at each of them a frame house of the most substantial kind, to be furnished with a galvanized iron "surf-boat," with ten separate air chambers, one hundred and eighty fathoms of hawser, three hundred and sixty fathoms of hauling line, six hundred yards of rocket line, rockets, &c., &c.

Stoves and fuel will also be placed in the buildings, which will be sufficiently large to shelter persons and goods. In addition to the surf-boats, *I propose to have a "life-car" at each station, which is designed to be sent to the stranded vessel when the wind and sea are too heavy for the best constructed boats to live. I have not yet had the car approved of by the committee of the board of underwriters, by whom I am advised in these matters, but I have no doubt it will meet their approbation.*

I am much indebted to Major Henry Wardell, one of your constituents, for valuable information on the subject of my present duties; and during my recent visit to that vicinity I had the satisfaction of hearing remarks from several intelligent persons, which evidenced that the people throughout the neighborhood were gratified that the government is about to place under their control more efficient means to enable them to extend their usefulness in saving life and property from shipwreck.

I have made some experiments in throwing a line from the shore to a vessel with a rocket, which was witnessed by Messrs. Suydam and Jones, of the committee, and several other gentlemen, who accompanied us in the United States revenue cutter outside of Sandy Hook, at which I fired several rockets with lines attached, and threw out 250 yards of line, weighing 1.62 ounce per yard, with which we tested the practicability of sending a hawser from the beach to a boat or vessel.

The rockets used on that occasion were imported by R. B. Forbes, esq., of Boston, who is the executive officer of the Massachusetts Humane Society, and is constructing surf-boats from the appropriation of five thousand dollars given by Congress to that society.

Captain Forbes informs me that Colonel Talcott, of the ordnance at Washington, has offered to furnish rockets from the arsenal at that place; for humane purposes and from experiments recently made by the officers in the pyrotechnic department, it is believed that he can produce rockets fully equal to those imported.

It is my intention, as soon as the weather will permit, to make some trials in throwing a line by means of a *mortar and shot*, and am of the opinion that we will also place them at the several stations. I can scarcely answer your inquiry respecting the persons to whom the boats are to be entrusted; but from what I learn on that point, my opinion is, that the surfman who first arrives at the boat-house, should

have have the privilege of taking charge of her for that occasion, provided he has the ability to take the "steering-oar;" and if he has not, none of the others will place themselves under his command.

I am, very respectfully, your obedient servant,
DOUGLASS OTTINGER,
Capt. U. S. R. Marine.

Hon. W. A. NEWELL,
Member of Congress.

I.

SQUAM BEACH, MONMOUTH CO., N. J.,
March 13, 1850.

SIR: I was present and superintended and sent the line by the mortar, on board the ship "Ayrshire," on the 12th January, 1850, and by means of the metallic life-car we landed in safety her passengers, in all two hundred and one, which, in my opinion, at that time, could not have been otherwise saved, as the sea was so bad that no open boat could have lived. We attached the line to the shot and fired it from the mortar. It fell directly across the wreck and was caught by the crew on board and the hawser hauled off, to which we attached the metallic life-car, and pulled her to and from the wreck through a terrific foaming surf. Every soul—men, women, children, and infants—came through the surf, during that cold snow-storm, dry and comfortable.

During the whole time of landing these persons, one of the India rubber floats, put around the cars outside by order of the government officer who superintended, was full of water, and the other full of air, showing the ability of the metallic boat to do her work, even under such disadvantages as having air on one side, and the weight of water in the India rubber float on the other, in a heavy surf.

The ship came on shore abreast of the station-house—the station-houses are ten miles apart; now, if she had struck between two houses, or even four miles from shelter, many of those we saved from drowning would have perished with cold, as it was a cold snow-storm at the time; but, as it was, all were landed dry and comfortable, and no one suffered, as we immediately put them in the house, where they had the benefit of the fuel provided by government; and this, in my opinion, shows the necessity of having the stations nearer together.

I have had much experience in wrecking, and was present at the wreck of the ship "John Minturn," and now state, decidedly, (and many others, who were present at both wrecks, join me,) that if we could have had the mortar and metallic life-car we would have saved a great proportion, if not all, of the souls from the John Minturn, which was wrecked on this beach.

The car is also very valuable for landing specie, jewels, silks, and packages of all kinds that could not be saved by an open boat.

We can also now communicate with the ship by means of the mortar

and car as soon as she strikes, without waiting, as heretofore, for the storm to cease, by which time she may go to pieces, and all be lost.

With the above arrangements, well attended to, there need be but few lives lost, and much less property.

Yours, very respectfully,

JOHN MAXEN,
Wreckmaster.

WALTER R. JONES, Esq.,

President of the Board of Underwriters of N. Y.

K.

STATE OF NEW JERSEY, EXECUTIVE DEPARTMENT,
Trenton, October 16, 1857.

DEAR SIR: I was very happy to hear from you by your recent favor. It was quite unnecessary for you to inform me who you were. I assure you I shall never cease to know or to remember you as one who has contributed very much towards lessening the dangers of the sea, and one to whom our Jersey people are almost entirely indebted for the valuable apparatus which has been the means of saving so many hundred lives and so much property. I am well satisfied that, had you not been entrusted with the erection and furnishing of the life-stations on our coast, my own individual effort to that end would never have amounted to much.

Now, if you could be more specific in your wishes, and inform me exactly what you want me to do in the way of recommendation to the Secretary of the Treasury—what office it is you wish to fill—you may command me to any extent.

I am, very respectfully and truly, yours,

WM. A. NEWELL.

Capt. D. OTTINGER.

P. S.—Don't be backward about expressing your wishes.

L.

WASHINGTON, D. C., *March 4, 1858.*

DEAR SIR: We have examined, at your request, your "life-car," and from the good service that it has already rendered in rescuing the lives of nearly five hundred persons from stranded ships on our coast under circumstances of peculiar peril, and when no other human aid could reach them, we do not see why it should not succeed with disabled ships at sea, using the precautions and following the direc-

tions so clearly given by you. We also think that "whalers" in the Pacific, as well as other vessels that are frequently compelled to communicate with the shore through the surf, often impracticable with the ordinary means at their disposal, would find your life-car of the greatest possible assistance and convenience.

Wishing you all the success that so laudable an undertaking deserves,

We are, very truly, your obedient servants,

WM. W. HUNTER,

Com'r U. S. N.

JAMES ALDEN,

Com'r U. S. N.

Capt. DOUGLASS OTTINGER,
U. S. Revenue Service.

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JOHN A. RAGAN AND OTHERS.

MAY 14, 1858.

Mr. HILL, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred the petition of John Asburn Ragan and others, proposing to become the purchasers of two lakes, to wit, Lake Washington, in Washington County, Mississippi, and Lake Point Coupee, in the State of Louisiana, both the property of the United States, report as follows:

The price proposed to be paid for said lakes is twenty-five cents an acre, certainly a very small consideration, provided said lakes can be converted to any very valuable purposes, and in the opinion of the committee not sufficient to induce the government to part with the proprietorship. The petitioners propose to breed and rear large and valuable fishes, such as the trout, from Lake Superior, and the rock salmon, of Lake Michigan, and also to grow the Itasca rice, the Sinhara Tanyah, &c., for market. The committee, without affecting to be skilled as naturalists, are of opinion that the salmon of Lake Michigan and the trout of Lake Superior belong to those particular localities, and cannot be profitably transplanted to waters wholly different and to a climate so opposite to their native abode. It may be that the rice and other vegetable productions proposed to be grown might prove profitable; but your committee are averse to bestowing bounties, in the shape of low priced lands, for the promotion of objects of questionable utility. If the petitioners had proposed to lease for a term of years the two lakes and agreed to attempt no drainage of either, for a fair remuneration to government, it might not be objectionable. As it is the Committee cannot recommend the sale of said lakes.

CITIZENS OF MISSOURI ASKING LAND IN AID OF THE
CONSTRUCTION OF A RAILROAD.

MAY 14, 1858.

Mr. HILL, from the Committee on Public Lands, made the following

REPORT.

The Committee on Public Lands, to whom was referred sundry petitions from citizens of Cape Girardeau county, Missouri, and others, requesting Congress "to grant to the State of Missouri the public lands remaining unsold in the Jackson district, in said State, to be applied, so far as they may be available, in aiding the aforesaid State, or a company chartered by the State, to make a railroad from the city of Cape Girardeau, in the State of Missouri, and on the Mississippi river, to intersect the Iron Mountain railroad at or near the Pilot Knob, in the aforesaid State, with a view to an ultimate extension to the city of Springfield, the commercial centre of southwest Missouri," have had the same under consideration, and now report as follows:

Heretofore, applications for grants of public lands to aid in the construction of railroads and canals have uniformly, or most generally, presented some inducement to the government to make such donations in the shape of an enhanced value by reason of such improvements of the portions of such lands as were reserved by the government. On this ground it has been argued, and at least with much plausibility, that government was not loser by making such grants. In the case, however, now under consideration, no equivalent whatever is offered for the grant proposed, but Congress is appealed to, to give unconditionally "*all the lands*" belonging to the government in the Jackson district. The claims of the petitioners, based upon their merits as "*pioneers and descendants of pioneers*," having undergone the hardships and privations incident to the settlement of a new country, do not entitle them, in the opinion of the committee, to the gratuity sought to be obtained. In the present embarrassed condition of the national treasury, it is certainly inexpedient to deprive the government of any means it may be able to make available to supply the increasing deficiency of its exchequer. These lands, if worth anything to a railroad company, or to the State of Missouri, can not be valueless to the United States. Entertaining these views of the inexpediency of making such grant, the committee recommend that the prayer of the petitioners be not allowed.

APPORTIONMENT OF CLERKS AND MESSENGERS IN THE
GOVERNMENT DEPARTMENTS.

[To accompany Bill H. R. No. 127.]

MAY 17, 1858.

Mr. ROBERT SMITH, from the Select Committee, submitted the following

REPORT.

The Special Committee to which was referred the bill (H. R. No. 127) to apportion the clerks and messengers in the several departments of the government in the city of Washington amongst the several States and Territories and the District of Columbia, have had the same under consideration and submit the following report:

There are now employed, in the service of the executive departments and bureaus of the government in the city of Washington, of the several classes of clerks and messengers authorized by law, as shown by the "Official Register," on the 30th of September, 1857, twelve hundred and four, (1204;) and from that date till the 4th of March, 1858, there has been appointed permanent and temporary clerks and messengers, and those employed by the day and by the piece, one hundred and sixteen, (116,) making 1,320. This will give five appointments to each congressional district, Territory, and District of Columbia, leaving a fraction of one hundred and ten to be apportioned as the heads of departments may deem expedient and proper.

The following table, compiled from official sources of information, shows the number appointed from each State, Territory, and the District of Columbia, and the number to which each would be entitled in accordance with the principles adopted by the bill under consideration.

APPORTIONMENT OF CLERKS, ETC.

TABLE A.

MAINE.

Name.	Office.	Where employed.	Salary.
John F. Hartley	Clerk	Treasury Department	\$1,800 00
Philip C. Johnson	do	Navy Department	1,800 00
Robert Long	do	Treasury Department	1,600 00
W. H. Codman	do	do	1,600 00
William A. Evans	do	do	1,600 00
Alanson B. Caswell	do	Post Office Department	1,600 00
Samuel H. Cutts	do	Treasury Department	1,400 00
John Hartley	do	do	1,400 00
Thomas J. Hobbs	do	do	1,400 00
H. L. Fuller	do	do	1,400 00
F. H. Stickney	do	do	1,400 00
J. D. Anderson	do	do	1,400 00
Charles T. Pope	do	do	1,400 00
A. D. Harmon	do	do	1,400 00
William Ryan	do	do	1,400 00
J. H. Jordan	do	do	1,400 00
James Murrow	do	Interior Department	1,400 00
Thomas Fillebrown	do	Navy Department	1,400 00
Oliver B. Merrill	do	do	1,400 00
Jeremiah O'Brien	do	Post Office Department	1,400 00
C. A. Jordan	do	Treasury Department	1,200 00
W. J. Purrington	do	do	1,200 00
George H. Shaw	do	Interior Department	1,200 00

NEW HAMPSHIRE.

Amos B. Little	Examiner	Interior Department	2,500 00
Thomas H. Dodge	do	do	2,500 00
Moses Kelly	Chief clerk	do	2,200 00
George J. Abbott	Clerk	State Department	1,800 00
Richard Els	do	do	1,800 00
S. E. Cones	do	Interior Department	1,800 00
E. L. Childs	do	Post Office Department	1,800 00
John Bedel	do	Treasury Department	1,600 00
John C. Wilson	do	do	1,600 00
D. P. Perkins	do	Interior Department	1,600 00
Joseph Manahan	do	Treasury Department	1,400 00
George Marston	do	do	1,400 00
J. G. Todd	do	Interior Department	1,400 00
K. F. Page	do	do	1,400 00
Richard B. Lowe	do	Post Office Department	1,200 00
Walter A. Norris	do	do	1,200 00
Thomas Stackpole	Watchman	Executive mansion	600 00

VERMONT.

J. H. Lane	Examiner	Interior Department	2,500 00
Chauncey Smith	Clerk	Post Office Department	1,600 00
S. G. Heaton	do	Interior Department	1,400 00
E. E. Risk	do	do	1,200 00
William F. Hall	do	do	Per folio, 10

APPORTIONMENT OF CLERKS, ETC.

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TABLE A—Continued.

MASSACHUSETTS.

Name.	Office.	Where employed.	Salary.
Ammi B. Young.....	Architect.....	Treasury Department.....	\$3,000 00
Charles W. Welsh.....	Chief clerk.....	Navy Department.....	2,200 00
Thomas Bartlett.....	Clerk.....	Treasury Department.....	1,800 00
J. H. Adams, jr.....	do.....	Interior Department.....	1,800 00
Edmund F. French.....	do.....	Treasury Department.....	1,600 00
John Etheridge.....	do.....	Navy Department.....	1,600 00
Henry J. D. Pratt.....	do.....	State Department.....	1,400 00
C. F. McDonald.....	do.....	Treasury Department.....	1,400 00
J. O. Wilson.....	do.....	do.....	1,400 00
J. E. Conant.....	do.....	Interior Department.....	1,400 00
A. J. Cass.....	do.....	do.....	1,400 00
William B. Lee.....	do.....	War Department.....	1,400 00
Woodbury Emery.....	do.....	Post Office Department.....	1,400 00
Joseph T. Adams.....	do.....	Treasury Department.....	1,200 00
Robert Jones.....	do.....	do.....	1,200 00
F. Pelletier.....	do.....	do.....	Per day, 5 00
L. B. Dixon.....	do.....	do.....	Per day, 3 62
H. O. Brigham.....	do.....	Interior Department.....	Per folio, 10

RHODE ISLAND.

William Hunter.....	Chief clerk.....	State Department.....	2,200 00
A. T. Jenkes.....	Clerk.....	Interior Department.....	1,800 00
J. A. Johnson.....	do.....	do.....	1,100 00

CONNECTICUT.

S. H. Huntington.....	Chief clerk.....	Court of Claims.....	3,000 00
John Galpin.....	Clerk.....	Interior Department.....	1,800 00
John S. Williams.....	do.....	Office Public Printing.....	1,800 00
G. D. Jewett.....	do.....	do.....	1,800 00
Henry A. Burr.....	do.....	Post Office Department.....	1,800 00
J. N. Prior.....	do.....	Interior Department.....	1,600 00
Thomas P. Trott.....	do.....	Post Office Department.....	1,600 00
Henry A. Olcott.....	do.....	Treasury Department.....	1,400 00
G. C. Williams.....	do.....	do.....	1,400 00
E. Shaw.....	do.....	Interior Department.....	1,400 00
C. L. Daboll.....	do.....	do.....	1,400 00
Lucius R. Allyn.....	do.....	Navy Department.....	1,400 00
Henry A. Bills.....	do.....	Post Office Department.....	1,400 00
L. H. Rickard.....	do.....	Treasury Department.....	1,200 00
Dudley Webster.....	do.....	Interior Department.....	1,200 00
C. C. Burr.....	do.....	do.....	1,200 00
Augustus E. Merritt.....	do.....	Navy Department.....	1,200 00
Timothy Malihan.....	Watchman.....	Post Office Department.....	600 00

NEW YORK.

Samuel Hein.....	Clerk.....	Treasury Department.....	2,500 00
S. M. Clark.....	do.....	do.....	2,000 00
George McCoy.....	do.....	do.....	2,000 00

APPORTIONMENT OF CLERKS, ETC.

TABLE A—NEW YORK—Continued.

Names.	Office.	Where employed.	Salary.
Peter Lammond.....	Clerk.....	Interior Department.....	\$2,000 00
J. N. Granger.....	do.....	do.....	2,000 00
D. J. Browne.....	do.....	do.....	2,000 00
T. Glover.....	do.....	do.....	2,000 00
H. R. Schoolcraft.....	do.....	do.....	2,000 00
S. Cole.....	do.....	do.....	2,000 00
Ransom H. Gillett.....	do.....	Office Attorney General.....	2,000 00
Edward Stubbs.....	do.....	State Department.....	2,000 00
J. Van Santvoord.....	do.....	Interior Department.....	1,800 00
Thomas Antisell.....	do.....	do.....	1,800 00
St. J. B. L. Skinner.....	do.....	Post Office Department.....	1,800 00
Phillip Harry.....	do.....	War Department.....	1,800 00
Robert S. Chilton.....	do.....	State Department.....	1,600 00
William Hogan.....	do.....	do.....	1,600 00
William J. Rose.....	do.....	do.....	1,600 00
James T. Raymond.....	do.....	Treasury Department.....	1,600 00
Chester Demming.....	do.....	do.....	1,600 00
George Hartwell.....	do.....	do.....	1,600 00
H. Berrian.....	do.....	do.....	1,600 00
T. H. Lane.....	do.....	do.....	1,600 00
John Oliphant.....	do.....	do.....	1,600 00
L. F. Pourtales.....	do.....	do.....	1,600 00
S. Brintnall.....	do.....	Interior Department.....	1,600 00
J. L. Cramer.....	do.....	do.....	1,600 00
F. W. Ritter.....	do.....	do.....	1,600 00
William W. Turner.....	do.....	do.....	1,600 00
Samuel P. Bell.....	do.....	do.....	1,600 00
A. M. Smith.....	do.....	do.....	1,600 00
Oskar Bessau.....	do.....	do.....	1,600 00
W. B. Malcom.....	do.....	do.....	1,600 00
Samuel B. Beach.....	do.....	Post Office Department.....	1,600 00
George Petrie.....	do.....	do.....	1,600 00
Martin McMahon.....	do.....	do.....	1,600 00
Daniel D. T. Leech.....	do.....	do.....	1,600 00
William B. Heartt.....	do.....	Treasury Department.....	1,400 00
Samuel N. Salomon.....	do.....	do.....	1,400 00
Hugh McNeill.....	do.....	do.....	1,400 00
Asa L. Hazleton.....	do.....	do.....	1,400 00
Abial Allen.....	do.....	do.....	1,400 00
William P. Shearman.....	do.....	do.....	1,400 00
F. J. Seybolt.....	do.....	do.....	1,400 00
John D. Hogan.....	do.....	do.....	1,400 00
James C. Haviland.....	do.....	do.....	1,400 00
L. H. Parish.....	do.....	do.....	1,400 00
D. McCarty.....	do.....	Interior Department.....	1,400 00
C. Walbridge.....	do.....	do.....	1,400 00
Richard Kelly.....	do.....	do.....	1,400 00
N. B. Smith.....	do.....	do.....	1,400 00
C. O. Joline.....	do.....	do.....	1,400 00
M. J. Bacon.....	do.....	do.....	1,400 00
E. Marsh.....	do.....	do.....	1,400 00
William M. Ferguson.....	do.....	War Department.....	1,400 00
Amos D. Hollister.....	do.....	Post Office Department.....	1,400 00
Oliver J. Ruger.....	do.....	do.....	1,400 00
W. S. Beare.....	do.....	Treasury Department.....	1,200 00
William Blair.....	do.....	do.....	1,200 00
F. Ringold.....	do.....	do.....	1,200 00
J. C. Mattison.....	do.....	do.....	1,200 00
J. Vierbuchen.....	do.....	do.....	1,200 00

APPORTIONMENT OF CLERKS, ETC.

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TABLE A—NEW YORK—Continued.

Names.	Office.	Where employed.	Salary.
S. W. Gillett	Clerk	Interior Department	\$1,200 00
Clark Ryder	do	do	1,200 00
A. G. Fowler	do	do	1,200 00
G. B. Metzger	do	Treasury Department	\$3 75 per day.
Mary Schoolcraft	do	Interior Department	\$3 per day.
James S. Ewbank	do	do	10 cts. per fol.
Ebenezer V. Campbell	Watchman	do	800 00
James Owens	Messenger	State Department	700 00

NEW JERSEY.

Francis N. Barbarin	Clerk	War Department	1,800 00
Martin Johnson	do	Treasury Department	1,600 00
W. A. Johnson	do	Interior Department	1,600 00
Joseph H. Blackfan	do	Post Office Department	1,600 00
Joseph Quicksall	do	do	1,600 00
B. F. Rogers	do	Treasury Department	1,400 00
W. S. Foot	do	do	1,400 00
Joseph E. Potts	do	do	1,400 00
John Kearns	do	do	1,400 00
Isaac Hackett	do	do	1,400 00
E. D. Leazer	do	do	1,400 00
J. W. C. Evans	do	do	1,400 00
D. C. Wilson	do	Interior Department	1,400 00
Andrew Van Bussum	do	Post Office Department	1,400 00
William M. Collom	do	Treasury Department	1,200 00
S. B. Read	do	Interior Department	1,200 00
Benjamin Naar, jr.	do	Post Office Department	1,200 00
Bowman Sailer	do	do	1,200 00
J. J. Ricketts	do	Treasury Department	\$3 70 per d.
Simeon Mead	Messenger	do	840 00

PENNSYLVANIA.

J. Saxton	Sup't weights and measures	Treasury Department	2,500 00
T. R. Peale	Examiner	Interior Department	2,500 00
J. Buchanan Henry	Private secretary	Executive mansion	2,500 00
Gilbert Rodman	Chief clerk	Treasury Department	2,200 00
John Oakford	do	Post Office Department	2,200 00
S. M. McKean	Clerk	Treasury Department	2,000 00
James M. Ramsey	do	do	2,000 00
David W. Mahon	do	do	2,000 00
Thomas Feran	do	do	2,000 00
S. T. Shugert	do	Interior Department	2,000 00
John Hood	do	do	2,000 00
Francis Markoe	do	State Department	1,800 00
James N. Barker	do	Treasury Department	1,800 00
Henry Rogers	do	do	1,800 00
F. Dankworth	do	do	1,800 00
W. H. Sanderson	do	Interior Department	1,800 00
D. Crawford	do	do	1,800 00
William A. Gordon	do	War Department	1,800 00
Robert J. Niven	do	Post Office Department	1,800 00
Nicholas Halter	do	do	1,800 00

APPORTIONMENT OF CLERKS, ETC.

TABLE A—PENNSYLVANIA—Continued.

Name.	Office.	Where employed.	Salary.
Alexander H. Derrick	Clerk	State Department	\$1,600 00
John J. Polk	do	do	1,600 00
William M. Gouge	do	Treasury Department	1,600 00
Alexander Mahon	do	do	1,600 00
John M. Sims	do	do	1,600 00
John B. Sullivan	do	do	1,600 00
William H. Sullivan	do	do	1,600 00
S. A. Houston	do	do	1,600 00
T. J. McCamant	do	do	1,600 00
W. A. Shannon	do	do	1,600 00
Hopkins Lightner	do	do	1,600 00
J. Bartram North	do	do	1,600 00
Benjamin Evans	do	Interior Department	1,600 00
W. H. Coleman	do	do	1,600 00
William Flynn	do	do	1,600 00
D. T. Jenkes	do	do	1,600 00
J. P. Tustin	do	do	1,600 00
H. L. Harvey	do	Navy Department	1,600 00
Chester A. Colt	do	Post Office Department	1,600 00
William Slemmer	do	do	1,600 00
William P. Young	do	do	1,600 00
James Maher	Public gardener	Interior Department	1,440 00
C. M. B. Harris	Clerk	Treasury Department	1,400 00
T. F. Anderson	do	do	1,400 00
R. W. Middleton	do	do	1,400 00
J. C. Kretschmar	do	do	1,400 00
Charles W. Schreiner	do	do	1,400 00
William Ferguson	do	do	1,400 00
E. A. Whipple	do	do	1,400 00
J. W. Miles	do	do	1,400 00
J. B. Oliver	do	do	1,400 00
S. Y. McNair	do	do	1,400 00
John Todd	do	do	1,400 00
L. R. Hamersley	do	do	1,400 00
M. A. Turner	do	do	1,400 00
F. S. Shulze	do	do	1,400 00
De Witten Haines	do	do	1,400 00
Jonas D. Bachman	do	do	1,400 00
Thomas E. Martin	do	do	1,400 00
Thomas H. Baird, jr.	do	Interior Department	1,400 00
W. L. Waller	do	Treasury Department	1,400 00
T. J. Albright	do	Interior Department	1,400 00
G. P. Howell	do	do	1,400 00
A. M. Clark	do	do	1,400 00
George Plitt Smith	do	do	1,400 00
D. M. Bull	do	do	1,400 00
J. B. Meek	do	do	1,400 00
Samuel D. Finkel	do	War Department	1,400 00
Charles Slemmer	do	do	1,400 00
W. Schall	do	Navy Department	1,400 00
Richard Powell	do	do	1,400 00
John P. Wolf	do	do	1,400 00
Charles K. Stellwagen	do	do	1,400 00
Chester Tuttle	do	do	1,400 00
James F. Shunk	do	Office Attorney General	1,400 00
George W. Kellinor	do	Post Office Department	1,400 00
Benjamin F. Baer	do	do	1,400 00
George Boyer	do	do	1,400 00
Henry Major	do	do	1,400 00
Israel Uncapher	do	do	1,400 00

APPORTIONMENT OF CLEERKS, ETC.

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TABLE A—PENNSYLVANIA—Continued.

Name.	Office.	Where employed.	Salary
Francis De Hoes Janvier	Clerk	Post Office Department	\$1,400 00
James M. Miller	do.	do.	1,400 00
Joseph Lescure	do.	do.	1,400 00
Benjamin U. Keyser	do.	Treasury Department	1,400 00
G. E. W. Sharretts	do.	do.	1,200 00
Samuel Linton	do.	do.	1,200 00
R. S. Lynch	do.	do.	1,200 00
Henry C. Stroman	do.	do.	1,200 00
James B. O'Conner	do.	do.	1,200 00
H. Frysinger	do.	Interior Department	1,200 00
B. W. Gillis	do.	do.	1,200 00
J. F. Souder	do.	do.	1,200 00
Charles McClure	do.	War Department	1,200 00
Francis Connolly	do.	Post Office Department	1,200 00
William Wickes	do.	do.	1,200 00
S. S. Fahnestock	do.	Treasury Department	Per day, 5 00
J. H. Phillips	Draughtsman	Interior Department	Per piece.
John W. Shugert	Clerk	do.	Per folio, 10
David Pool	do.	do.	Per folio, 10
Marsh B. Clark	Messenger	Navy Department	840 00

DELAWARE.

John Knight	Clerk	Treasury Department	1,800 00
W. Read	do.	Interior Department	1,800 00
James M. Torbett	do.	Treasury Department	1,600 00
William H. Jones	do.	do.	1,600 00
Benjamin A. Janvier	do.	do.	1,400 00
Allan Thomson	do.	Interior Department	1,400 00
Richard B. Bayard	do.	Office Attorney General	1,400 00
G. F. Gouley	do.	Interior Department	1,200 00

MARYLAND.

A. Herbert	Examiner	Interior Department	2,500 00
E. Foreman	do.	do.	2,500 00
George Mathlott	Clerk	Treasury Department	2,000 00
James S. Mackie	do.	State Department	1,800 00
W. H. S. Taylor	do.	Treasury Department	1,800 00
John F. Boone	do.	do.	1,800 00
H. E. Bateman	do.	do.	1,800 00
R. Geddes	do.	Interior Department	1,800 00
Richard Gott	do.	War Department	1,800 00
James L. Addison	do.	do.	1,800 00
Philip Lansdale	do.	Navy Department	1,800 00
George Thompson	do.	War Department	1,800 00
William E. Stubbs	do.	State Department	1,600 00
William J. Bromwell	do.	do.	1,600 00
William Handy	do.	Treasury Department	1,600 00
Charles Vinson	do.	do.	1,600 00
Henry K. Randall	do.	do.	1,600 00
J. B. Carns	do.	do.	1,600 00
James McClery	do.	do.	1,600 00
B. C. Ridgate	do.	do.	1,600 00

APPORTIONMENT OF CLERKS, ETC.

TABLE A—MARYLAND—Continued.

Names.	Office.	Where employed.	Salary.
N. A. Randall	Clerk	Interior Department.....	\$1,600 00'
Benjamin H. Dorsey	do	do	1,600 00'
J. D. Wilson	do	do	1,600 00'
J. J. Smith	do	do	1,600 00'
T. Jenkins	do	do	1,600 00'
J. Calvert	do	do	1,600 00'
Edmund H. Brooke	do	War Department	1,600 00'
James H. Marr	do	Post Office Department.....	1,600 00'
James N. Davis	do	do	1,600 00'
James Lawrenson	do	do	1,600 00'
E. Crossdale	do	Treasury Department	1,400 00'
John Ott	do	do	1,400 00'
Gideon Pearce	do	do	1,400 00'
George F. Worthington	do	do	1,400 00'
Albert Ellery	do	do	1,400 00'
Ed. T. Mathews	do	do	1,400 00'
Samuel L. Gouvencur, jr.	do	do	1,400 00'
De Wilton Snowden	do	do	1,400 00'
Charles De Bonceray	do	do	1,400 00'
George W. Blacoe	do	do	1,400 00'
B. A. Fitzhugh	do	do	1,400 00'
J. H. Somerwell	do	do	1,400 00'
J. W. Anderson	do	do	1,400 00'
F. L. Grammer	do	do	1,400 00'
George W. Barry	do	do	1,400 00'
Francis A. Willis	do	do	1,400 00'
Lewis Brand	do	do	1,400 00'
Edmund Crossdale	do	do	1,400 00'
A. W. Russell	do	do	1,400 00'
A. K. Smith	do	Interior Department	1,400 00'
John D. Ott	do	do	1,400 00'
W. O. Lumsden	do	do	1,400 00'
Samuel D. Mills	do	do	1,400 00'
T. E. Sands	do	do	1,400 00'
James Morris	do	do	1,400 00'
J. H. Woolford	do	do	1,400 00'
John S. Moore	do	do	1,400 00'
Thomas Cromwell	do	War Department	1,400 00'
J. P. McElderry	do	Navy Department	1,400 00'
George F. De la Roche	do	do	1,400 00'
Jonathan Guest	do	Post Office Department.....	1,400 00'
Lorenzo Dorsey	do	do	1,400 00'
John Spencer	do	do	1,400 00'
Dennis Callahan	do	War Department	1,400 00'
John L. Nelson	do	Treasury Department	1,200 00'
Isaac Williams	do	do	1,200 00'
William H. Chase	do	do	1,200 00'
James Bulloch	do	do	1,200 00'
A. Wingerd	do	Interior Department.....	1,200 00'
W. O. Conway	do	do	1,200 00'
De Witt Kent	do	do	1,200 00'
G. F. Bowie	do	do	1,200 00'
L. Handy	do	do	1,200 00'
C. Birnie	do	do	1,200 00'
T. L. Darnall	do	do	1,200 00'
James M. Wright	do	War Department	1,200 00'
John B. Condon	do	Post Office Department.....	1,200 00'
E. Ourand	Messenger	Treasury Department	840 00'
William A. Elliott	do	Navy Department	840 00'

APPORTIONMENT OF CLERKS, ETC.

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TABLE A—MARYLAND—Continued.

Name.	Office.	Where employed.	Salary.
J. C. Howard.....	Messenger.....	Interior Department.....	\$700 00
S. Coomes.....	.....	.....do.....	600 00
William Jones.....	.....	Treasury Department.....	600 00
J. A. Rowland.....	Clerk.....	Interior Department.....	Per folio, 10

VIRGINIA.

William Drinkard.....	Chief clerk.....	War Department.....	2,200 00
A. J. O'Bannon.....	Clerk.....	Treasury Department.....	2,000 00
W. B. Randolph.....	do.....	.....do.....	2,000 00
H. C. Williams.....	do.....	Interior Department.....	2,000 00
William P. S. Sanger.....	do.....	Navy Department.....	2,000 00
Tallaferro Hunter.....	do.....	Treasury Department.....	2,000 00
Robert S. Chew.....	do.....	State Department.....	1,800 00
Robert W. Young.....	do.....	.....do.....	1,800 00
Woodville Latham.....	do.....	Treasury Department.....	1,800 00
Anthony McLean.....	do.....	.....do.....	1,800 00
M. Bull.....	do.....	Interior Department.....	1,800 00
A. Chapman.....	do.....	.....do.....	1,800 00
W. H. Woodley.....	do.....	.....do.....	1,800 00
W. M. C. Fairfax.....	do.....	Treasury Department.....	1,800 00
William C. Reddall.....	do.....	State Department.....	1,600 00
Hugh C. McLaughlin.....	do.....	.....do.....	1,600 00
Charles Fisher.....	do.....	Treasury Department.....	1,600 00
Mason Campbell.....	do.....	.....do.....	1,600 00
Lewis Beard.....	do.....	.....do.....	1,600 00
Charles Hume.....	do.....	.....do.....	1,600 00
G. W. Mercer.....	do.....	.....do.....	1,600 00
Thomas C. Daniels.....	do.....	.....do.....	1,600 00
A. F. Cunningham.....	do.....	.....do.....	1,600 00
Richard T. Mathews.....	do.....	.....do.....	1,600 00
Thomas Mustin.....	do.....	.....do.....	1,600 00
W. C. Lipscomb.....	do.....	.....do.....	1,600 00
E. M. Merchant.....	do.....	.....do.....	1,600 00
I. J. Massie.....	do.....	.....do.....	1,600 00
William S. Morgan.....	do.....	.....do.....	1,600 00
Benjamin F. Mackall.....	do.....	.....do.....	1,600 00
P. H. Sweet.....	do.....	.....do.....	1,600 00
William Gordon.....	do.....	.....do.....	1,600 00
J. E. Stewart.....	do.....	.....do.....	1,600 00
M. B. D. Lane.....	do.....	.....do.....	1,600 00
L. Peyton.....	do.....	.....do.....	1,600 00
James D. Kerr.....	do.....	War Department.....	1,600 00
James Eveleth.....	do.....	.....do.....	1,600 00
William L. Bailey.....	do.....	.....do.....	1,600 00
William P. Moran.....	do.....	Navy Department.....	1,600 00
William Bell.....	do.....	Post Office Department.....	1,600 00
John Hunter.....	do.....	.....do.....	1,600 00
William J. Darden.....	do.....	.....do.....	1,600 00
George H. Jones.....	Secretary to sign land patents.....	Interior Department.....	1,500 00
George Bartle.....	Clerk.....	State Department.....	1,400 00
Alexander Hall.....	do.....	Treasury Department.....	1,400 00
William B. Collins.....	do.....	.....do.....	1,400 00
Merit Jordan.....	do.....	.....do.....	1,400 00
Samuel H. Janney.....	do.....	.....do.....	1,400 00
Robert Grame.....	do.....	.....do.....	1,400 00

APPORTIONMENT OF CLERKS, ETC.

TABLE A—VIRGINIA—Continued.

Names.	Office.	Where employed.	Salary.
Joseph A. Craighill.....	Clerk.....	Treasury Department....	\$1,400 00
Wythe Denby.....	do.....	do.....	1,400 00
George Ott Wunder.....	do.....	do.....	1,400 00
John P. Bentley.....	do.....	do.....	1,400 00
S. M. Edwards.....	do.....	do.....	1,400 00
William J. Bronaugh.....	do.....	do.....	1,400 00
William S. Darrell.....	do.....	do.....	1,400 00
C. T. Hull.....	do.....	do.....	1,400 00
J. J. Schermerhorn.....	do.....	do.....	1,400 00
John Beck.....	do.....	do.....	1,400 00
W. W. Tyler.....	do.....	do.....	1,400 00
J. H. Strider.....	do.....	do.....	1,400 00
M. M. Anderson.....	do.....	do.....	1,400 00
John C. Bronaugh.....	do.....	do.....	1,400 00
Robert Cawthorn.....	do.....	do.....	1,400 00
W. V. W. Weaver.....	do.....	do.....	1,400 00
John G. Hedgman.....	do.....	do.....	1,400 00
Francis Lowndes.....	do.....	do.....	1,400 00
H. Mitchell.....	do.....	Interior Department.....	1,400 00
E. A. Cabell.....	do.....	do.....	1,400 00
J. W. Heater.....	do.....	do.....	1,400 00
P. M. Martin.....	do.....	do.....	1,400 00
H. C. Loving.....	do.....	do.....	1,400 00
P. E. Wilson.....	do.....	do.....	1,400 00
Bernard Hooe.....	do.....	do.....	1,400 00
J. Williams.....	do.....	do.....	1,400 00
W. W. Sperry.....	do.....	do.....	1,400 00
W. A. Street.....	do.....	do.....	1,400 00
John A. Hunnicutt.....	do.....	do.....	1,400 00
Thomas P. Lewis.....	do.....	War Department.....	1,400 00
Thomas J. Abbott.....	do.....	do.....	1,400 00
J. C. Goolrick.....	do.....	do.....	1,400 00
Charles H. Lee.....	do.....	do.....	1,400 00
Abel P. Upshur.....	do.....	Navy Department.....	1,400 00
James M. Young.....	do.....	do.....	1,400 00
Charles K. King.....	do.....	do.....	1,400 00
Edward M. Tidball.....	do.....	do.....	1,400 00
Robert C. Page.....	do.....	Post Office Department....	1,400 00
Richard D. Spottswood.....	do.....	do.....	1,400 00
James F. Devine.....	do.....	do.....	1,400 00
James T. Ball.....	Police at Capitol.....	Interior Department.....	1,320 00
G. W. L. Kidwell.....	Clerk.....	Treasury Department.....	1,200 00
S. Melvin.....	do.....	do.....	1,200 00
A. E. Saunders.....	do.....	do.....	1,200 00
Robert E. Preston.....	do.....	do.....	1,200 00
S. W. Hampton.....	do.....	do.....	1,200 00
B. J. Nalle.....	do.....	Interior Department.....	1,200 00
Joel Pennybacker.....	do.....	do.....	1,200 00
S. Alburtis.....	do.....	do.....	1,200 00
B. T. Swart.....	do.....	do.....	1,200 00
C. P. Higginson.....	do.....	do.....	1,200 00
John S. Pennybacker.....	do.....	do.....	1,200 00
W. W. Jacob.....	do.....	do.....	1,200 00
J. A. Kayser.....	do.....	do.....	1,200 00
George M. Cook.....	do.....	War Department.....	1,200 00
S. Ramsey.....	do.....	do.....	1,200 00
James T. McIver.....	do.....	Post Office Department....	1,200 00
Tapley W. Young.....	do.....	do.....	1,200 00
Edward Wharton.....	do.....	Treasury Department.....	1,200 00

APPORTIONMENT OF CLERKS, ETC.

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TABLE A—VIRGINIA—Continued.

Names.	Office.	Where employed.	Salary.
Gustavus S. Tallafarro.....	Clerk.....	Treasury Department.....	\$1,200 00
G. A. Porterfield.....	do.....	do.....	1,100 00
F. L. Brockett.....	do.....	Interior Department.....	Per folio, 10
Thomas Foster.....	Messenger.....	Treasury Department.....	840 00
George R. Adams.....	do.....	Interior Department.....	840 00
G. C. Ashton.....	do.....	Treasury Department.....	700 00
R. C. Campbell.....	do.....	Interior Department.....	750 00
W. Clarke.....	Watchman.....	Treasury Department.....	600 00
E. Cooper Butler.....	Laborer.....	War Department.....	600 00
James Eveleth.....	Supt. of Winder's building.....	do.....	250 00

NORTH CAROLINA.

L. B. Hardin.....	Clerk.....	Navy Department.....	2,000 00
Alexander N. Zevery.....	do.....	Post Office Department.....	2,000 00
John W. Cameron.....	do.....	Navy Department.....	1,800 00
John Trader.....	do.....	Treasury Department.....	1,600 00
William J. Cowan.....	do.....	do.....	1,600 00
J. H. Blake.....	do.....	Interior Department.....	1,600 00
William J. Gulick.....	do.....	Navy Department.....	1,600 00
Gustavus A. Schwarzman.....	do.....	Post Office Department.....	1,600 00
A. T. McCallum.....	do.....	Treasury Department.....	1,400 00
B. S. Ashburn.....	do.....	do.....	1,400 00
William H. Joyner.....	do.....	do.....	1,400 00
J. B. Holderby.....	do.....	Interior Department.....	1,400 00
L. J. Brown.....	do.....	do.....	1,400 00
John Gilman.....	do.....	Navy Department.....	1,400 00
Joseph S. Robinson, jr.....	do.....	do.....	1,400 00
William W. Morrison.....	do.....	do.....	1,400 00
S. Bulow Irwin.....	do.....	do.....	1,400 00
Obadiah Woodson.....	do.....	Treasury Department.....	1,200 00
W. F. Riddick.....	do.....	Interior Department.....	1,200 00
R. S. Powell.....	do.....	do.....	1,200 00
William V. Giffroy.....	do.....	do.....	1,200 00
John T. Winslow.....	do.....	Navy Department.....	1,200 00
B. West.....	do.....	Interior Department.....	Per folio, 10

SOUTH CAROLINA.

Charles H. Rhett.....	Clerk.....	Interior Department.....	1,800 00
L. W. Caldwell.....	do.....	Treasury Department.....	1,600 00
R. C. Griffin.....	do.....	Interior Department.....	1,600 00
William W. Young.....	do.....	War Department.....	1,600 00
Edward McCann.....	do.....	Treasury Department.....	1,400 00
Thomas B. Thurston.....	do.....	do.....	1,400 00
Lewis Cruger.....	do.....	do.....	1,400 00
Thomas W. Thompson.....	do.....	do.....	1,200 00
S. G. Jamison.....	do.....	Interior Department.....	1,200 00
B. S. Howard.....	do.....	do.....	1,200 00

APPORTIONMENT OF CLERKS, ETC.

TABLE A—Continued.

GEORGIA.

Names.	Office.	Where employed.	Salary.
Thompson Allan	Clerk	Interior Department	1,800 00
John S. Lewis	do	Treasury Department	1,600 00
Francis Doyle	do	do	1,600 00
Thaddeus Sturgis	do	do	1,600 00
J. H. Smith	do	do	1,400 00
W. C. Powell	do	Interior Department	1,400 00
Thomas Moore	do	do	1,400 00
Robert A. Mathews	do	Treasury Department	1,200 00
G. H. Spencer	do	do	1,200 00
J. A. Crawford	do	do	1,200 00
R. H. L. Buchanan	do	do	1,200 00
W. Grisham	do	Interior Department	1,200 00

FLORIDA.

Edgar M. Garnett	Clerk	Court of Claims	2,000 00
Eben Eveleth	do	Treasury Department	1,600 00
Robert A. Lacey	do	Post Office Department	1,600 00
D. W. Archer	do	Treasury Department	1,400 00
B. W. Johnson	do	Interior Department	1,400 00
J. B. Dorsey	do	War Department	1,400 00
F. A. Patterson	do	Interior Department	1,200 00

ALABAMA.

G. Bailey	Clerk	Interior Department	2,000 00
D. R. Lindsay	do	Treasury Department	2,000 00
T. L. Moody	do	do	1,600 00
James Orr	do	Post Office Department	1,600 00
D. L. Dalton	do	Interior Department	1,400 00
James Chestney	do	do	1,400 00
J. H. Hood	do	do	1,400 00
James E. Peebles	do	Post Office Department	1,400 00
Joseph P. Davidson	do	Treasury Department	1,200 00
C. L. Sayre	do	do	1,200 00
A. J. Huggins	do	Interior Department	1,200 00
J. L. C. Danner	do	do	1,200 00
J. M. Parks	do	do	1,200 00

MISSISSIPPI.

William D. Nutt	Clerk	Treasury Department	1,800
E. B. Grayson	do	Interior Department	1,800
W. W. Lester	do	do	1,600
John Dowling	do	do	1,600
Andrew J. Clark	do	Treasury Department	1,400
J. G. Jewell	do	do	1,400
A. J. Haley	do	Interior Department	1,400
W. W. Yerby	do	do	1,400

APPORTIONMENT OF CLERKS, ETC.

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TABLE A—MISSISSIPPI—Continued.

Names.	Office.	Where employed.	Salary.
B. F. Slocumb.....	Clerk.....	Interior Department.....	\$1,400
H. A. Cooke.....	do.....	Treasury Department.....	1,200
Owen McGarr.....	do.....	do.....	1,200
J. R. Young.....	do.....	do.....	1,200
W. A. D. Carroll.....	do.....	Interior Department.....	1,200
R. O. Davidson.....	do.....	do.....	1,200
W. C. Worthington.....	do.....	do.....	1,200
John M. Jewell.....	do.....	War Department.....	1,200

LOUISIANA.

Alexander Dimitry.....	Clerk.....	State Department.....	1,800
R. R. Rhodes.....	do.....	Interior Department.....	1,800
W. Hall.....	do.....	do.....	1,600
S. F. Glenn.....	do.....	do.....	1,600
Edmund P. Gaines.....	do.....	Post Office Department.....	1,600
J. E. Todhunter.....	do.....	do.....	1,600
Stephen Duncan.....	do.....	Treasury Department.....	1,400
A. H. McRea.....	do.....	do.....	1,400
W. N. J. Godwin.....	do.....	do.....	1,400
Fred. Kley.....	do.....	do.....	1,400
John W. Nixon.....	do.....	do.....	1,200
W. B. Nixon.....	do.....	do.....	1,200
T. H. Maddox.....	do.....	do.....	1,200
S. Duncan.....	do.....	Interior Department.....	1,200
Edward Auld.....	do.....	do.....	1,200
John B. S. Dimitry.....	do.....	Attorney General's office..	1,200

TEXAS.

Archibald Roane.....	Clerk.....	Attorney General's office..	1,600
Joseph F. Lewis.....	do.....	Post Office Department.....	1,600
David Bissett.....	do.....	Treasury Department.....	1,400
Thomas K. Wallace.....	do.....	do.....	1,400
W. Hogan.....	do.....	Interior Department.....	1,400
Lucien L. Dawson.....	do.....	do.....	1,200
C. B. Snow.....	do.....	Treasury Department.....	1,100

ARKANSAS.

J. E. Talbott.....	Clerk.....	Interior Department.....	1,600
R. B. Norment.....	do.....	Treasury Department.....	1,400
Charles E. Pleasants.....	do.....	do.....	1,400
L. B. Dunn.....	do.....	Interior Department.....	1,400
F. Minor.....	do.....	do.....	1,400
J. N. Carpenter.....	do.....	do.....	1,200

TABLE A—Continued.

TENNESSEE.

Names.	Office.	Where employed.	Salary.
Henry Baldwin	Examiner	Interior Department	\$2,500
William Anderson	Clerk	Treasury Department	1,600
H Langtry	do	do	1,600
L L Loring	do	do	1,600
A. Russell	do	do	1,600
Aaron Moise	do	do	1,600
E. F. Ruth	do	Interior Department	1,600
James C. McCarty	do	Navy Department	1,600
James K. P. Campbell	do	Post Office Department	1,600
P. V. R. Van Wyck	do	Treasury Department	1,400
A. L. Edwards	do	do	1,400
Archibald McNeill	do	do	1,400
Isaac Estill	do	do	1,400
W. S. Crawford	do	Interior Department	1,400
T. J. Miller	do	do	1,400
Dick W. Collins	do	do	1,400
H. H. Goodloe	do	do	1,400
John W. Hogg	do	Navy Department	1,400
Walter S. McNairy	do	do	1,400
W. Irving Crandell	do	Post Office Department	1,400
Benjamin W. Clements	do	do	1,400
G. W. Beall	do	Interior Department	1,200
Thomas B. Graham	do	do	1,200
W. T. Helms	do	do	1,200
Michael French	Watchman	do	600

KENTUCKY.

George C. Scheaffer	Examiner	Interior Department	2,500 00
J. M. Henry	do	do	2,500 00
B. F. Pleasants	Clerk	Treasury Department	2,000 00
John D. Colmesnil	do	do	2,000 00
F. Cosby	do	do	1,600 00
G. M. Head	do	do	1,600 00
J. W. Irwin	do	Interior Department	1,600 00
W. M. Fitzhugh	do	do	1,600 00
T. J. Robinson	do	do	1,600 00
Richard C. Washington	do	Post Office Department	1,600 00
P. H. Cooney	do	Treasury Department	1,400 00
John M. Crawford	do	do	1,400 00
James D. Southard	do	do	1,400 00
John J. Wright	do	do	1,400 00
J. N. Oliver	do	do	1,400 00
S. V. Hunter	do	do	1,400 00
J. H. Clark	do	Interior Department	1,400 00
R. J. A. Harrison	do	do	1,400 00
Thomas C. Cox	do	State Department	1,200 00
J. N. Sheppard	do	Treasury Department	1,200 00
E. Brooks	do	Interior Department	1,200 00
R. W. Hamilton	do	do	1,200 00
William R. Bradford	do	do	Per folio, 10
F. G. Terry	Messenger	Treasury Department	700 00

TABLE A—Continued.

OHIO.

Names.	Office.	Where employed.	Salary.
Henry Beard.....	Clerk.....	Interior Department.....	\$2,000 00
Robert Leech.....	do.....	Treasury Department.....	1,800 00
H. P. K. Peck.....	do.....	Interior Department.....	1,800 00
S. C. Boynton.....	do.....	do.....	1,800 00
Samuel H. Lamborn.....	do.....	Office Public Printing.....	1,800 00
E. M. Whittlesey.....	do.....	Treasury Department.....	1,600 00
John M. Connell.....	do.....	do.....	1,600 00
M. H. Miller.....	do.....	do.....	1,600 00
J. W. Brown.....	do.....	do.....	1,600 00
Alexander Elliott.....	do.....	do.....	1,600 00
D. Higgins.....	do.....	do.....	1,600 00
B. T. Reilly.....	do.....	Interior Department.....	1,600 00
H. L. Skinner.....	do.....	do.....	1,600 00
N. H. Starbuck.....	do.....	do.....	1,600 00
David Saunders.....	do.....	Post Office Department.....	1,600 00
William H. Weirick.....	do.....	Treasury Department.....	1,400 00
John A. Beatty.....	do.....	do.....	1,400 00
William P. Partello.....	do.....	do.....	1,400 00
Thaddeus Atkinson.....	do.....	do.....	1,400 00
A. J. Bentley.....	do.....	do.....	1,400 00
J. F. Bollmeyer.....	do.....	do.....	1,400 00
George W. Hill.....	do.....	do.....	1,400 00
J. W. Amos.....	do.....	do.....	1,400 00
H. M. McGill.....	do.....	do.....	1,400 00
S. Y. Mason.....	do.....	do.....	1,400 00
J. Moody Smith.....	do.....	do.....	1,400 00
Joseph H. McIlvaine.....	do.....	do.....	1,400 00
James H. Bingham.....	do.....	Interior Department.....	1,400 00
J. W. Walton.....	do.....	do.....	1,400 00
E. L. Stevens.....	do.....	do.....	1,400 00
J. D. Bloor.....	do.....	do.....	1,400 00
Imri R. Kelly.....	do.....	do.....	1,400 00
Newell Kennon.....	do.....	do.....	1,400 00
George W. Johns.....	do.....	Post Office Department.....	1,400 00
John Chase.....	do.....	do.....	1,400 00
Charles Armor.....	do.....	do.....	1,400 00
Joseph McDowell.....	do.....	Treasury Department.....	1,200 00
Jefferson Jones.....	do.....	do.....	1,200 00
J. M. Binkley.....	do.....	Interior Department.....	1,200 00
J. D. Patten.....	do.....	do.....	1,200 00
Benjamin Riggs.....	do.....	do.....	1,200 00
J. H. Heath.....	do.....	do.....	1,200 00
E. M. Horrel.....	do.....	do.....	1,200 00
C. S. Butts.....	do.....	do.....	1,200 00
John Carolus.....	do.....	Post Office Department.....	1,200 00
Henry Bittinger.....	Messenger.....	Interior Department.....	700 00
D. C. Davis.....	Watchman.....	do.....	600 00

INDIANA.

Thomas M. Smith.....	Clerk.....	Treasury Department.....	2,000 00
Charles T. Jones.....	do.....	do.....	2,000 00
Ans F. Chapin.....	do.....	Interior Department.....	1,800 00
S. G. Dodge.....	do.....	do.....	1,800 00

APPORTIONMENT OF CLERKS, ETC.

TABLE A—INDIANA—Continued.

Names.	Office.	Where employed.	Salary.
William D. Shephard.....	Clerk	Treasury Department.....	\$1,600 00
T. L. Davis.....	do.....	do.....	1,600 00
Oliver Dufour.....	do.....	Interior Department.....	1,600 00
P. McHargh.....	do.....	do.....	1,600 00
William Lee.....	do.....	Treasury Department.....	1,400 00
G. Cowing.....	do.....	do.....	1,400 00
J. W. Cummins.....	do.....	do.....	1,400 00
R. H. Bigger.....	do.....	do.....	1,400 00
Dean Radebaugh, jr.....	do.....	do.....	1,400 00
C. Steves Horton.....	do.....	do.....	1,400 00
C. Adams.....	do.....	Interior Department.....	1,400 00
John M. Caldwell.....	do.....	Post Office Department.....	1,400 00
Samuel J. Johnson.....	Police.....	Capitol.....	1,320 00
Richard D. Slater.....	do.....	Capitol.....	1,320 00
A. G. Browning.....	Clerk.....	Treasury Department.....	1,200 00
A. Steele.....	do.....	Interior Department.....	1,200 00
S. R. Howell.....	do.....	do.....	1,200 00
R. S. Davis.....	do.....	do.....	1,200 00
W. G. Whittlesey.....	do.....	do.....	1,200 00
Theodore Reed.....	do.....	do.....	1,200 00
S. S. Crowe.....	do.....	do.....	1,200 00
James Hendricks.....	do.....	do.....	1,200 00
Lewis Jordon.....	do.....	do.....	1,200 00
G. C. Thatcher.....	Messenger.....	do.....	700 00

ILLINOIS.

J. E. Hilgard.....	Clerk	Treasury Department.....	2,300 00
Francis G. Murray.....	do.....	do.....	1,600 00
A. Bielaski.....	do.....	Interior Department.....	1,600 00
N. Vedder.....	do.....	do.....	1,600 00
S. J. Dallas.....	do.....	do.....	1,600 00
W. O. Slade.....	do.....	do.....	1,600 00
A. B. Sparks.....	do.....	do.....	1,600 00
Daniel McCook.....	do.....	do.....	1,600 00
Joseph B. Chandler.....	do.....	Treasury Department.....	1,400 00
C. P. Webster.....	do.....	Interior Department.....	1,400 00
J. G. Long.....	do.....	do.....	1,400 00
G. C. McLeran.....	do.....	Treasury Department.....	1,200 00
Lewis B. Wynne.....	do.....	do.....	1,200 00
C. Young.....	do.....	Interior Department.....	1,200 00
J. M. Lucas.....	do.....	do.....	1,200 00
J. D. Rynard.....	do.....	do.....	1,200 00
George C. Hanson.....	do.....	do.....	1,200 00
Jacob Fouke.....	do.....	do.....	1,200 00
Nathaniel Wilson.....	do.....	do.....	1,200 00
James Maine.....	do.....	Treasury Department.....	1,100 00

MISSOURI.

Edmund Flagg.....	Clerk	State Department.....	2,000 00
H. St. George Offutt.....	do.....	Treasury Department.....	2,000 00
E. M. Clark.....	do.....	do.....	1,600 00
J. B. McAllister.....	do.....	do.....	1,600 00

APPORTIONMENT OF CLERKS, ETC.

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TABLE A—MISSOURI—Continued.

Names.	Office.	Where employed.	Salary.
Robert J. Lackey.....	Clerk	Treasury Department.....	\$1,600 00
J. R. Roche	do	Interior Department	1,600 00
J. T. Quisenbury	do	Treasury Department.....	1,400 00
H. B. Kerrick	do	do	1,400 00
A. J. Deannies	do	Interior Department	1,400 00
L. C. Hootee	do	do	1,400 00
J. C. B. Clark	do	do	1,200 00
F. M. Ewell.....	do	do	1,200 00
J. V. A. Shelds.....	do	do	1,200 00
Wadsworth Ramsey.....	do	War Department	1,200 00

MICHIGAN.

Nathan Rice.....	Clerk	War Department	2,000 00
O. W. Moore	do	Interior Department	1,800 00
Isaac D. Toll	do	do	1,800 00
P. J. Loranger	do	do	1,600 00
Ezra Williams	do	do	1,600 00
J. E. Parker.....	do	do	1,400 00
H. J. Frost.....	do	do	1,400 00
R. B. Richards	do	do	1,400 00
Edward C. Eddie.....	do	Navy Department	1,400 00
Marcus Lane.....	do	Treasury Department	1,200 00
John P. Quinn.....	do	do	1,200 00
L. C. Forsyth.....	do	do	1,200 00
J. B. Bloss.....	do	Interior Department	1,200 00
L. M. Taylor	do	do	1,200 00
R. F. O'Beirne.....	do	do	1,200 00
J. T. Raynor.....	do	do	1,200 00
G. W. Clarke.....	do	do	1,200 00
S. G. Chase	do	do	1,200 00
Reuben Spencer.....	do	Post Office Department.....	1,200 00
John A. Trook.....	do	do	1,200 00
A. L. Gage.....	do	Interior Department	Per folio, 10
E. B. Chase	do	do	Per folio, 10
W. H. Tredway.....	Messenger	do	700 00
A. C. Orr.....	Laborer	do	600 00

WISCONSIN.

J. P. Sheldon.....	Clerk	Treasury Department	1,600 00
William Burke.....	do	do	1,600 00
R. D. Clarke	do	do	1,600 00
Samuel Reeve	do	do	1,400 00
G. T. Getty	do	do	1,400 00
H. A. Haydn.....	do	Post Office Department.....	1,400 00
James McCarrick.....	do	do	1,400 00
Henry A. Lockwood.....	do	Treasury Department	1,200 00
Joseph Schwartz	do	War Department	1,200 00

APPORTIONMENT OF CLERKS, ETC.

TABLE A—Continued.

IOWA.

Names.	Office.	Where employed.	Salary.
P. F. Wilson	Clerk	Interior Department	\$1,600 00
Joseph T. Fales	do	do	1,600 00
A. G. Marshman	do	Treasury Department	1,400 00
E. G. Guest	do	Interior Department	1,400 00
H. Holt	do	do	Per folio, 10
John H. Ballman	Watchman	do	600 00

CALIFORNIA.

G. S. Oldfield	Clerk	Treasury Department	1,600 00
John Thaw	do	do	1,600 00
William N. Barker	do	do	1,400 00
W. E. G. Keen	do	do	1,400 00
R. B. Ironside	do	Interior Department	1,400 00
William M. Irwin	do	do	1,400 00
Michael Delany	do	do	1,400 00
Robert J. Delong	do	Treasury Department	1,200 00
J. H. Keller	do	Interior Department	1,200 00
E. H. Tharp	do	do	1,200 00

MINNESOTA.

W. D. Phillips	Clerk	Interior Department	1,600 00
W. R. McLagan	Laborer	do	600 00

OREGON.

Charles K. Gardner	Clerk	Interior Department	1,400 00
G. B. Simpson	do	do	1,200 00

WASHINGTON.

C. M. Yulee	Clerk	Interior Department	1,200 00
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KANSAS.

H. B. Pollard	Clerk	Treasury Department	1,200 00
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APPORTIONMENT OF CLERKS, ETC.

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TABLE A—Continued.

DISTRICT OF COLUMBIA.

Names.	Office.	Where employed.	Salary.
D. C. Lawrence	Examiner	Interior Department	\$2,500
Thomas J. Cathcart	Clerk	Treasury Department	2,000
W. Mechlin	do	do	2,000
Samuel S. Rind	do	do	2,000
Joseph S. Wilson	do	Interior Department	2,000
Charles E. Mix	do	do	2,000
Albert H. Campbell	do	do	2,000
Henry D. Johnson	do	State Department	1,800
William H. West	do	Treasury Department	1,800
William B. Taylor	do	Interior Department	1,800
J. W. DeKraft	do	do	1,800
Hugh McCormick	do	do	1,800
John Potts	do	War Department	1,800
W. D. Beall	do	do	1,800
George Bender	do	do	1,800
B. Johnson	do	do	1,800
William Ridgely	do	Navy Department	1,800
Joseph P. McCorkle	do	do	1,800
William Towers	do	Office Superintendent Pub- lic Printing.	1,800
C. W. C. Dunnington	Capt. of police	Capitol	1,740
J. N. Lovejoy	Clerk	Treasury Department	1,600
Henry Brewer	do	do	1,600
John Y. Laub	do	do	1,600
A. B. Claxton	do	do	1,600
Brooke Mackall	do	do	1,600
James M. Cutts	do	do	1,600
George D. Abbott	do	do	1,600
James Colegate	do	do	1,600
C. W. Forrest	do	do	1,600
S. C. Ford	do	do	1,600
Charles Abbott	do	do	1,600
R. L. Mackall	do	do	1,600
H. G. O'Neal	do	do	1,600
J. E. Holland	do	do	1,600
Nicholas Tastett	do	do	1,600
T. B. Addison	do	do	1,600
J. P. Wheeler	do	do	1,600
L. J. Anderson	do	do	1,600
Samuel Hanson	do	do	1,600
Jeremiah W. Bronaugh	do	do	1,600
Samuel Harkness	do	do	1,600
H. Suter	do	do	1,600
L. Welsh	do	do	1,600
P. Simpson	do	do	1,600
H. P. C. Wilson	do	do	1,600
Samuel M. Bootes	do	do	1,600
B. F. Rittenhouse	do	do	1,600
Edgar Patterson	do	do	1,600
John D. Barclay	do	do	1,600
W. V. H. Brown	do	Interior Department	1,600
W. H. Lowry	do	do	1,600
F. A. Tscheffely	do	do	1,600
R. T. Morsell	do	do	1,600
W. T. Brooke	do	do	1,600
A. L. McIntire	do	do	1,400
Charles E. Upperman	do	do	1,600

TABLE A—DISTRICT OF COLUMBIA—Continued.

Names.	Office.	Where employed.	Salary.
L. F. Whitney.....	Clerk.....	Interior Department.....	\$1,600 00
Hezekiah Miller.....	do.....	do.....	1,600 00
George H. Holtzman.....	do.....	do.....	1,600 00
G. D. Kean.....	do.....	do.....	1,600 00
John Robb.....	do.....	do.....	1,600 00
James Goessler.....	do.....	War Department.....	1,600 00
James C. Wilson.....	do.....	do.....	1,600 00
Morris Adler.....	do.....	do.....	1,600 00
Columbus Monroe.....	do.....	do.....	1,600 00
George S. Watkins.....	do.....	Navy Department.....	1,600 00
John Mason.....	do.....	Office Attorney General.....	1,600 00
John C. Marron.....	do.....	Post Office Department.....	1,600 00
John L. Lancaster.....	do.....	do.....	1,600 00
Cranstoun Laurie.....	do.....	do.....	1,600 00
Joseph H. Wheat.....	do.....	do.....	1,600 00
M. J. McClery.....	do.....	Treasury Department.....	1,600 00
Charles A. Schott.....	do.....	do.....	1,600 00
James D. King.....	do.....	do.....	1,600 00
Randolph Coyle.....	Civil engineer.....	Interior Department.....	1,500 00
Lysander H. Cook.....	Clerk.....	State Department.....	1,400 00
Samuel B. Parris.....	do.....	Treasury Department.....	1,400 00
Joseph Ingle.....	do.....	do.....	1,400 00
Edward Pierce.....	do.....	do.....	1,400 00
H. W. Balmain.....	do.....	do.....	1,400 00
Charles W. Pettit.....	do.....	do.....	1,400 00
Bennett Clements.....	do.....	do.....	1,400 00
William A. Rind, jr.....	do.....	do.....	1,400 00
Richard T. Dove.....	do.....	do.....	1,400 00
H. J. Crosson.....	do.....	do.....	1,400 00
Mathew McCleod.....	do.....	do.....	1,400 00
James W. Robertson.....	do.....	do.....	1,400 00
Walter H. S. Taylor, jr.....	do.....	do.....	1,400 00
George Humes.....	do.....	do.....	1,400 00
Henry E. Woodbury.....	do.....	do.....	1,400 00
Alfred Lindsay.....	do.....	do.....	1,400 00
John A. Throckmorton.....	do.....	do.....	1,400 00
Robert S. Jordan.....	do.....	do.....	1,400 00
William Gadsby.....	do.....	do.....	1,400 00
E. H. Cummins.....	do.....	do.....	1,400 00
R. B. Washington.....	do.....	do.....	1,400 00
J. McNerhany.....	do.....	do.....	1,400 00
W. Evans.....	do.....	do.....	1,400 00
R. T. Queen.....	do.....	do.....	1,400 00
T. A. Scott.....	do.....	do.....	1,400 00
William A. Coburn.....	do.....	do.....	1,400 00
W. Addison.....	do.....	do.....	1,400 00
E. W. Fortney.....	do.....	do.....	1,400 00
Philip Smith.....	do.....	do.....	1,400 00
John W. Compton.....	do.....	do.....	1,400 00
Henry Smith.....	do.....	do.....	1,400 00
J. H. Moore.....	do.....	do.....	1,400 00
Charles W. Handy.....	do.....	do.....	1,400 00
John H. Smith.....	do.....	do.....	1,400 00
W. B. Berryman.....	do.....	do.....	1,400 00
Peyton Wise.....	do.....	do.....	1,400 00
Edward Wright.....	do.....	do.....	1,400 00
W. H. Selden.....	do.....	do.....	1,400 00
William Miller.....	do.....	do.....	1,400 00
Charles E. Davis.....	do.....	Interior Department.....	1,400 00

APPORTIONMENT OF CLERKS, ETC.

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TABLE A—DISTRICT OF COLUMBIA—Continued.

Names.	Office.	Where employed.	Salary.
Charles Lanman	Clerk	Interior Department	\$1,400 00
Joshua T. Taylor	do	do	1,400 00
W. W. King	do	do	1,400 00
Edward H. Fuller	do	do	1,400 00
A. J. Stansbury	do	do	1,400 00
A. Holmead	do	do	1,400 00
John Gould	do	do	1,400 00
M. R. Shyne	do	do	1,400 00
H. K. Kallussowski	do	do	1,400 00
John McDuell	do	do	1,400 00
W. A. Harris	do	do	1,400 00
T. T. O'Dell	do	do	1,400 00
C. E. Weaver	do	do	1,400 00
William G. Cranch	do	do	1,400 00
P. C. Howie	do	do	1,400 00
H. C. Lauch	do	do	1,400 00
B. F. De Bow	do	do	1,400 00
T. M. O'Brien	do	do	1,400 00
James B. Nourse	do	War Department	1,400 00
Robert B. Fowler	do	do	1,400 00
Samuel Rainey	do	do	1,400 00
William McDermott	do	do	1,400 00
J. P. Keller	do	do	1,400 00
William H. Watson	do	do	1,400 00
John A. Wilcox	do	do	1,400 00
Richard S. Cox	do	do	1,400 00
A. Balmain	do	do	1,400 00
Richard M. Hanson	do	do	1,400 00
Levi Davis	do	do	1,400 00
Stephen Gough	do	Navy Department	1,400 00
James Selden	do	do	1,400 00
John W. Bronaugh	do	do	1,400 00
George F. Green	do	do	1,400 00
B. T. McLain	do	Post Office Department	1,400 00
B. W. Wallace	do	do	1,400 00
J. H. Hamilton	do	do	1,400 00
H. L. Johnson	do	do	1,400 00
Thomas B. Reilly	do	do	1,400 00
Joseph Reynolds	do	do	1,400 00
B. Smith	do	Treasury Department	1,400 00
John L. Wirt	Police	Capitol	1,320 00
A. K. Arnold	do	do	1,320 00
William H. Thompson	do	do	1,320 00
Thomas C. Wells	do	do	1,320 00
B. L. Hawkins	Clerk	Treasury Department	1,300 00
John C. Nevins	do	State Department	1,200 00
Ferdinand Jefferson	do	do	1,200 00
Thomas Johnson	do	Treasury Department	1,200 00
John Sessford	do	do	1,200 00
James T. Clark	do	do	1,200 00
Francis N. Roche	do	do	1,200 00
William J. McCormick	do	do	1,200 00
James Reid	do	do	1,200 00
James Auld	do	do	1,200 00
Isaac R. Hanson	do	do	1,200 00
A. J. Jones	do	do	1,200 00
J. H. Washington	do	do	1,200 00
B. Widdecombe	do	do	1,200 00
Arthur West	do	do	1,200 00

APPORTIONMENT OF CLERKS, ETC.

TABLE A—DISTRICT OF COLUMBIA—Continued.

Names.	Office.	Where employed.	Salary.
J. H. Bartlett.....	Clerk.....	Treasury Department.....	\$1,200 00
G. G. Cox.....	do.....	do.....	1,200 00
G. D. Bronaugh.....	do.....	do.....	1,200 00
T. M. Embury.....	do.....	do.....	1,200 00
J. W. Daniel.....	do.....	do.....	1,200 00
J. R. Thompson.....	do.....	do.....	1,200 00
C. P. Wannall.....	do.....	do.....	1,200 00
Charles Stewart.....	do.....	do.....	1,200 00
Charles K. Sherman.....	do.....	do.....	1,200 00
Lucien Laselle.....	do.....	do.....	1,200 00
J. M. Moore.....	do.....	Interior Department.....	1,200 00
J. A. Deeble.....	do.....	do.....	1,200 00
R. Ricketts.....	do.....	do.....	1,200 00
J. A. Williamson.....	do.....	do.....	1,200 00
R. W. Burche.....	do.....	do.....	1,200 00
J. L. Edwards.....	do.....	do.....	1,200 00
J. F. Young.....	do.....	do.....	1,200 00
Grafton Powell.....	do.....	do.....	1,200 00
E. Brewer.....	do.....	do.....	1,200 00
W. F. Wallace.....	do.....	do.....	1,200 00
C. L. Alexander.....	do.....	do.....	1,200 00
J. L. Anderson.....	do.....	do.....	1,200 00
A. H. Anderson.....	do.....	do.....	1,200 00
A. E. La Merle.....	do.....	do.....	1,200 00
J. B. D. Littell.....	do.....	do.....	1,200 00
J. H. Peabody.....	do.....	do.....	1,200 00
E. L. Corbin.....	do.....	do.....	1,200 00
C. W. Frannoni.....	do.....	do.....	1,200 00
Robert J. Ryche.....	do.....	do.....	1,200 00
L. M. Morton.....	do.....	War Department.....	1,200 00
Joseph P. Moore.....	do.....	do.....	1,200 00
Henry C. Preuss.....	do.....	do.....	1,200 00
T. C. De Leon.....	do.....	do.....	1,200 00
N. W. Fales.....	do.....	do.....	1,200 00
Richard B. Irwin.....	do.....	do.....	1,200 00
Henry Robinson.....	do.....	do.....	1,200 00
J. F. Cain.....	do.....	do.....	1,200 00
John L. Elliott.....	do.....	Post Office Department.....	1,200 00
George M. Kendall.....	do.....	do.....	1,200 00
William T. S. Duvall.....	do.....	do.....	1,200 00
William H. Deitz.....	Temporary clerk.....	Interior Department.....	1,000 00
James Henning.....	do.....	War Department.....	1,000 00
J. M. Thomas.....	do.....	do.....	1,000 00
B. B. Foster.....	do.....	do.....	1,000 00
J. Schulthess.....	do.....	do.....	1,000 00
F. W. McKnew.....	do.....	do.....	1,000 00
Emerick W. Hansell.....	Messenger.....	State Department.....	900 00
John H. Reiss.....	do.....	Treasury Department.....	900 00
J. W. Shields.....	do.....	Interior Department.....	900 00
John Varden.....	do.....	do.....	900 00
Patrick Jordan.....	do.....	War Department.....	900 00
Samuel Mickum.....	do.....	Navy Department.....	900 00
Henry A. Klover.....	do.....	Office Attorney General.....	900 00
John Gordon.....	do.....	Post Office Department.....	900 00
G. A. C. Smith.....	Draftsman.....	Interior Department.....	Per piece...
J. E. Holmead.....	Clerk.....	do.....	10 cts. perfol.
A. McCormack.....	do.....	do.....	do.....
R. C. Weightman.....	do.....	do.....	do.....
W. B. Giles.....	do.....	do.....	do.....

TABLE A—DISTRICT OF COLUMBIA—Continued.

Name.	Office.	Where employed.	Salary.
John L. Adams.....	Clerk.....	Interior Department.....	10 cts. per fol.
A. T. McCormack.....	do.....	do.....	do.....
Eli Duvall.....	do.....	do.....	do.....
William M. McCauley, jr.	do.....	do.....	do.....
J. T. Powell.....	do.....	do.....	do.....
W. McNeir.....	do.....	do.....	do.....
J. Goldsborough Bruff.....	do.....	Treasury Department.....	\$5 per day..
B. Oertley.....	do.....	do.....	do.....
Adolf Cluss.....	do.....	do.....	do.....
L. O'Connor.....	do.....	do.....	do.....
A. Bosche.....	do.....	do.....	\$4 50 per day.
T. S. Richardson.....	do.....	do.....	\$3 50 per day.
C. Aichinger.....	do.....	do.....	do.....
J. C. Kondrup.....	do.....	do.....	do.....
Thomas J. Mulloy.....	Messenger.....	Office Public Printing.....	\$3 60 per day.
Thomas S. Donoho.....	Clerk.....	Interior Department.....	\$3 per day...
Joseph Killian.....	do.....	do.....	do.....
C. Simmons.....	do.....	do.....	do.....
George W. Dant.....	Messenger.....	do.....	do.....
J. V. N. Throop.....	Engraver.....	Treasury Department.....	64 cts. per hr.
A. Maedel.....	do.....	do.....	53 cts. per hr.
James H. Upperman.....	Watchman.....	Capitol grounds.....	\$876 00
James W. Garner.....	Messenger.....	Treasury Department.....	840 00
George C. Jackson.....	do.....	do.....	840 00
George Sylvester.....	do.....	do.....	840 00
William Thumbert.....	do.....	do.....	840 00
William W. Cox.....	do.....	do.....	840 00
Henry B. Croggon.....	do.....	do.....	840 00
George Johnson.....	do.....	do.....	840 00
Philip Hines.....	do.....	do.....	840 00
G. Rowzee.....	do.....	Interior Department.....	840 00
Charles Draine.....	do.....	do.....	840 00
Charles Hibbs.....	do.....	do.....	840 00
George Phelps.....	do.....	War Department.....	840 00
Oliver B. Denham.....	do.....	do.....	840 00
George Thompson.....	do.....	do.....	840 00
N. Mulliken.....	do.....	do.....	840 00
J. H. Collins.....	do.....	do.....	840 00
Walter Codman.....	do.....	do.....	840 00
Charles Hunt.....	do.....	Navy Department.....	840 00
Ignatius Lucas.....	do.....	do.....	840 00
Samuel Simmons.....	do.....	do.....	840 00
Stark B. Taylor.....	do.....	Court of Claims.....	800 00
Francis Datcher.....	do.....	War Department.....	720 00
George Fales.....	do.....	Treasury Department.....	700 00
John Hamilton.....	do.....	do.....	700 00
Eli Duvall.....	do.....	do.....	700 00
C. H. Ball.....	do.....	do.....	700 00
Samuel Sherwood.....	do.....	do.....	700 00
Henry Croggon.....	do.....	do.....	700 00
Ignatius Ruppert.....	do.....	do.....	700 00
Alonso Jackson.....	do.....	Interior Department.....	700 00
W. E. Morgan.....	do.....	do.....	700 00
W. S. Graham.....	do.....	do.....	700 00
B. Frere.....	do.....	do.....	700 00
W. T. Ford.....	do.....	do.....	700 00
F. Depro.....	do.....	do.....	700 00
George D. Hibbs.....	do.....	do.....	700 00
John Watt.....	Gardener.....	Executive mansion.....	700 00
Lindsay Muse.....	Messenger.....	Navy Department.....	700 00

TABLE A—Continued.

DISTRICT OF COLUMBIA.

Names.	Office.	Where employed.	Salary.
William J. Walker.....	Messenger.....	Post Office Department...	\$700 00
William L. Norton.....	do.....	do.....	700 00
John N. Browning.....	do.....	do.....	700 00
William H. Walker.....	do.....	Treasury Department.....	600 00
Lewis Burgdarf.....	do.....	Interior Department.....	600 00
James Donaldson.....	Watchman.....	State Department.....	600 00
W. H. Prentiss.....	do.....	do.....	600 00
Richard Harrison.....	do.....	do.....	600 00
Anthony Best.....	do.....	do.....	600 00
James Poole.....	do.....	Treasury Department.....	600 00
Hezekiah Sipe.....	do.....	do.....	600 00
C. A. Sengstack.....	do.....	do.....	600 00
G. G. Tyler.....	do.....	do.....	600 00
L. H. Henry.....	do.....	do.....	600 00
C. Coltman.....	do.....	do.....	600 00
F. R. May.....	do.....	do.....	600 00
S. C. Davidson.....	do.....	do.....	600 00
William Kelly.....	do.....	do.....	600 00
J. H. Hilton.....	do.....	do.....	600 00
Maurice Reidy.....	do.....	Interior Department.....	600 00
H. N. Steele.....	do.....	do.....	600 00
C. A. Stewart.....	do.....	do.....	600 00
Eugene McCarthy.....	do.....	do.....	600 00
W. E. Skelly.....	do.....	do.....	600 00
H. F. Pritchard.....	do.....	do.....	600 00
J. G. Naylor.....	do.....	do.....	600 00
H. Ridgway.....	do.....	do.....	600 00
E. G. Evans.....	do.....	do.....	600 00
Guy Graham.....	do.....	do.....	600 00
J. E. Powers.....	do.....	do.....	600 00
H. N. Steele.....	do.....	do.....	600 00
Isaac Beers.....	do.....	do.....	600 00
S. Kearney.....	do.....	do.....	600 00
M. Gassaway.....	do.....	do.....	600 00
P. Silven.....	do.....	do.....	600 00
T. N. Brashears.....	do.....	do.....	600 00
James Fleming.....	do.....	do.....	600 00
James Coleman.....	do.....	do.....	600 00
John B. Vernon.....	do.....	do.....	600 00
John Robinson.....	do.....	War Department.....	600 00
David Kurtz.....	do.....	do.....	600 00
William Douglas.....	do.....	do.....	600 00
Felder R. Dorsett.....	do.....	do.....	600 00
William McCarty.....	do.....	do.....	600 00
William Hughes.....	do.....	do.....	600 00
Thomas Grady.....	do.....	do.....	600 00
John Kane.....	do.....	do.....	600 00
Jesse Mann.....	do.....	Navy Department.....	600 00
Charles Tilley.....	do.....	do.....	600 00
R. M. Harrison.....	do.....	do.....	600 00
H. L. Chapin.....	do.....	do.....	600 00
Charles Kreamer.....	do.....	Post Office Department...	600 00
Eli Davis.....	do.....	do.....	600 00
Henry Evans.....	Laborer.....	Interior Department.....	600 00
Thomas Bolan.....	do.....	do.....	600 00
W. Cook.....	do.....	do.....	600 00
T. H. Quincy.....	do.....	do.....	600 00

TABLE A—Continued.

DISTRICT OF COLUMBIA.

Names.	Office.	Where employed.	Salary.
J. A. Crane	Laborer	Interior Department	\$600 00
Thomas D. Bond	do.	do.	600 00
B. C. Freeman	do.	do.	600 00
P. B. Fridley	do.	do.	600 00
B. Darden	do.	do.	600 00
F. W. Colclazer	do.	do.	600 00
C. C. Wilson	do.	do.	600 00
Isaac Landie	do.	do.	600 00
Paul Jennings	do.	do.	600 00
Thomas Lucas	do.	do.	600 00
Charles Syphax	do.	do.	600 00
Moses Orr	do.	War Department	600 00
Martin Benahan	do.	do.	600 00
M. Posey	do.	do.	600 00
Edward Gant	do.	do.	600 00
F. M. Strother	do.	do.	600 00
James Selden	do.	Navy Department	600 00
Antonio Liondi	do.	do.	600 00
James A. Ferguson	do.	do.	600 00
Edward L. Savoy	do.	do.	600 00
Henry Neale	do.	do.	600 00
John A. Simms	do.	do.	600 00
David Rich	do.	do.	600 00
George Cooke	do.	do.	600 00
Rexin Magruder	do.	do.	600 00
John R. W. Mankin	do.	Treasury Department	576 00
George W. Flood	do.	War Department	600 00
Thomas Burns	Messenger	Interior Department	438 00
Hannibal Graham	Laborer	do.	\$36 50 pr mo.

UNITED STATES ARMY.

Charles Calvert	Clerk	War Department	\$1,600 00
John G. Law	do.	do.	1,600 00
James H. Lowry	do.	do.	1,400 00
Richard O'Dowd	do.	do.	1,400 00
G. J. L. Foxwell	Messenger	do.	840 00
Charles Baker	do.	do.	840 00

FOREIGN COUNTRIES.

A. Bollé	Engraver	Treasury Department	\$1,800 00
J. Enthoffer	do.	do.	1,500 00
A. Blondeau	do.	do.	1,500 00
A. Sengteller	do.	do.	1,500 00
William Phillips	do.	do.	1,500 00
H. S. Barnard	do.	do.	\$3 75 pr day.

APPORTIONMENT OF CLERKS, ETC.

இ.

Statement of the number of clerks and other persons employed in the Executive Departments on the 30th of September, 1857, showing the State or Territory appointed from, the amount of patronage to each State and Territory, and the amount each State and Territory would be entitled to according to the electoral vote and delegates in Congress.

[illegible]

APPORTIONMENT OF CLERKS, ETC.

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Mississippi.....	2	13	2	6	41	73	1	943	6	1	378	7	1	913	3	6	6	1	2	1	1	1	3
Louisiana.....																							
Texas.....						2			2	4													
Arkansas.....									2														
Tennessee.....	1								1														
Kentucky.....	2					2			8														
Ohio.....						1	4		16														
Indiana.....						2	2		4														
Illinois.....			1						7														
Missouri.....						2			4														
Michigan.....						1	2		2														
Wisconsin.....									3														
Iowa.....									2														
California.....									2														
Minnesota.....									1														
Minnesota Territory.....																							
Oregon Territory.....																							
New Mexico Territory.....																							
Utah Territory.....																							
Washington Territory.....																							
Nebraska Territory.....																							
Kansas.....																							
District of Columbia.....						6	13	1	54	1													
United States army.....	1		1						2														
Foreign countries.....									1	4													
Total.....	2	13	2	6	41	73	1	943	6	1	378	7	1	913	3	6	6	1	2	1	1	1	3

APPORTIONMENT OF CLERKS, ETC.

B.—Statement of the number of clerks and other persons employed in the Executive Departments, &c.—Continued.

States and Territories.	Temporary clerks and other persons, \$3 per diem.	Temporary clerks, draughtsmen, engravers, and other persons paid by the folio, piece, or hour.	Messengers and other persons, salary \$900.	Watchmen, salary \$876 per annum.	Messengers, salary \$840 per annum.	Watchmen and others, salary \$800.	Messengers and others, salary \$750.	Messengers and others, salary \$730.	Messengers and others, salary \$700.	Watchmen and laborers, salary \$600.	Messengers and laborers, salary \$576.	Messengers and laborers, salary \$438.	Number of persons appointed from each State and Territory.	Amount paid to clerks and other persons each year.	Number of representatives each State and Territory now sends.	Number each State would be entitled to representation.	Amount of patronage in the Executive Departments distributed amongst the States according to the electoral vote and delegates in Congress.
Maine.....	93	\$33,900 00	6	30	\$49,598 96
New Hampshire	17	\$7,900 00	3	15	\$9,634 35
Vermont.....	5	6,700 00	3	15	\$9,694 35
Massachusetts	18	\$7,246 30	11	55	\$9,923 31
Rhode Island	3	5,300 00	2	10	\$1,309 46
Connecticut	18	\$7,900 00	4	20	\$1,949 53
New York.....	1	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	70	108,483 75	33	165	186,370 45
New Jersey.....	90	\$7,700 50	5	25	\$7,874 09
Pennsylvania	100	140,805 00	25	125	143,771 40
Delaware.....	8	19,900 00	1	5	15,974 61
Maryland.....	83	118,790 00	6	30	49,598 96
Virginia.....	117	165,850 00	13	65	79,873 06
North Carolina.....	93	32,400 00	8	40	\$3,948 70
South Carolina.....	10	14,400 00	6	30	49,598 96
Georgia.....	19	16,900 00	8	40	\$3,948 70
Florida.....	7	10,000 00	1	5	15,974 61
Alabama.....	13	18,900 00	7	25	47,933 63
Mississippi.....	16	59,900 00	6	25	\$7,874 09
Louisiana.....	16	59,900 00	4	20	\$1,949 53
Texas.....	7	9,700 00	3	15	\$1,999 46

APPORTIONMENT OF CLERKS, ETC.

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Arkansas.....	5	26	8	1	28	2	1	1	1	26	91	2	2	2	1,305	1,613,437 30	*941	†1,905	51,399 48
Tennessee.....															95	26,300 00	10	50	63,884 44
Kentucky.....	1									1					94	35,300 00	10	50	63,884 44
Ohio.....										1					53	76,300 00	91	105	112,479 01
Indiana.....										1					98	39,340 00	11	55	69,923 31
Illinois.....															90	98,400 00	9	45	56,573 57
Missouri.....															14	90,800 00	7	35	47,923 63
Michigan.....	2									1	1				94	98,900 00	4	20	31,949 22
Wisconsin.....											1				10	13,400 00	3	15	26,634 35
Iowa.....	1														5	6,000 00	2	10	21,999 48
California.....															10	13,800 00	2	10	21,999 48
Minnesota Territory.....											1				2	2,200 00	1	5	5,324 87
Oregon Territory.....															2	2,600 00	1	5	5,324 87
New Mexico Territory.....																	1	5	5,324 87
Utah Territory.....																	1	5	5,324 87
Washington Territory.....															1	1,900 00	1	5	5,324 87
Nebraska Territory.....																	1	5	5,324 87
Kansas.....															1	1,300 00	1	5	5,324 87
District of Columbia.....	4	13	8	1	20	1				1	19	80	2	2	363	425,613 00			
United States army.....															6	7,680 00			
Foreign countries.....															6	8,968 75			
Total.....	5	26	8	1	28	2	1	1	1	26	91	2	2	2	1,305	1,613,437 30	*941	†1,905	

* Members and delegates.

† This does not include the list of temporary clerkships, which is given in a supplemental table.

NOTE.—The columns showing amount of patronage does not include the amount paid to temporary clerks paid by the folio, piece, or hour.

Table showing the temporary clerks and messengers, and the permanent clerks, appointed since September 30, 1857, apportioned to the several States.

States.	Interior Department.	General P. O. Department.	Treasury Department.	State Department.	Navy Department.	War Department.	Aggregate appointments of each State.
Alabama.....	3						3
Arkansas.....							
Connecticut.....	2		3		1		6
California.....	2						2
Delaware.....							
Florida.....					1		1
Georgia.....			2				2
Indiana.....	2		4				6
Illinois.....	1						1
Iowa.....			1				1
Kentucky.....		1	3				4
Louisiana.....	1		1				2
Maine.....		2					2
Massachusetts.....			1			1	2
Maryland.....	5		2				7
Michigan.....							
Mississippi.....	1		1			1	3
Missouri.....	3		1				4
New Hampshire.....							
New York.....	2						2
New Jersey.....							
North Carolina.....	1						1
Ohio.....							
Pennsylvania.....	3		1				4
Rhode Island.....							
South Carolina.....			2				2
Tennessee.....	2	1					3
Texas.....							
Vermont.....							
Virginia.....	8		3	1		1	13
Wisconsin.....	2						2
District of Columbia.....	28	6	3	2	1	3	43
Minnesota.....							
Oregon.....							
New Mexico.....							
Washington.....							
Kansas.....							
Nebraska.....							
Whole number of appointments and temporary clerks, &c.....							116

* One appointment and one transfer; State not given.

It will be admitted, that every portion of the country is justly entitled to its due proportion of the employments and emoluments to be derived from the operations of the common government, whatever they may be; and it will also be admitted, that the above table exhibits a disparity in this respect, of which a very large portion of the country has just ground of complaint. It is not the purpose of the committee to discuss or inquire into the causes which have operated to produce this inequality, but they will content themselves with suggesting some of the obvious reasons why a remedy should be applied, and indicating a mode for its accomplishment. In providing for the establishment and organization of the federal government, the great and sagacious statesmen to whom the work was entrusted, saw the necessity of bringing together, not only a representation of every State, but a representation that should embody an integral portion of the State itself. This was secured by prescribing that each senator and representative should "be an inhabitant of the State in which he shall be chosen." The wisdom of this departure from the provisions of the British constitution, from which many of the excellent principles of our own are derived, will be conceded by all. Its object was to make the legislative department of the government to consist of members who should be actual inhabitants—integral portions of every constituency in the country. The people of one State were not permitted to delegate their legislative power to a resident of another State; they must be represented by one of their own number. This was regarded as the nearest practical approximation to the personal participation of the whole people in the acts of the government. The bill under consideration proposes to carry the same principles into the operations of the executive department, to which it is believed to be equally applicable, and would be attended with like beneficial results, as experience has demonstrated it to effect in the legislative department of the government. Your committee are aware of the difficulties that may result from making a sudden and radical change in the mode of carrying on any branch of business, or from overturning or incautiously interfering with long established customs and usages. And it may be objected to this measure, that the long established routine of the business of the departments may be disturbed, or that injury may result to individuals, whose long occupancy of official position has given them a sort of fee simple title to them, by a right of possession, "against which the memory of man runneth not to the contrary." While the committee are disposed to yield to these objections all the consideration to which they can have any claim, they still believe that the true interests of the government require that a system should be introduced, and steadily pursued, by which the employments and patronage of the federal government may be, by a gradual process, justly and equitably distributed to the several States and Territories.

Our government is emphatically a government of the whole people, and the secret of the rapid development of our national greatness and power, beyond all precedent or example, is in the fact that every citizen of the republic, no matter how humble his condition or in what part of the country he may reside, feels that he has, equally with the most distinguished, or with the citizen of the capital, a per-

sonal interest in the perpetuity of our institutions. All are alike interested, and cheerfully bear their proportion of the burdens incident to the maintenance of the government, and all are equally entitled to share in the benefits and favors which it has to dispense. It has been suggested, as an objection to the bill, that its operation might have a tendency to interfere with the prerogative of the appointing power, and to restrict the scope of its constitutional discretion. The committee do not regard the bill as obnoxious to this objection. It does not, in any way, propose to designate the persons to be appointed, but simply to provide that the selections shall be made in proper proportion from every portion of the Union. The right is fully conceded to the President and heads of departments, on whom rests the responsibility of seeing that the laws are faithfully executed, and that the public service is duly and promptly performed, to appoint such competent persons to fill the subordinate places as will sympathise with, and will labor zealously, to promote the success of the administration under which they serve. If such persons were only to be found in one or two States, it might be objectionable to require the departments to select their clerks and messengers from all the States; but your committee do not believe that patriotism, integrity, and business habits are confined to any one section of the Union. These are qualities common to the citizens of all the States. There is not believed to be a congressional district in the Union that could not furnish competent and efficient clerks, not only to the number to which it would be entitled under this bill, but sufficient to supply all the clerkships in the executive departments of the government, and with men as able and patriotic as have been heretofore furnished to so large an extent by the District of Columbia and a few congressional districts adjacent to the capital.

Your committee believe that, by distributing the offices as contemplated by this bill, the discretionary power of the heads of departments will be in no proper sense abridged or restricted in reference to their appointments, at the same time that it will relieve them, to a considerable extent, from the disagreeable necessity of deciding between applicants from different States with equal qualifications, where justice might preponderate on one hand, and outside pressure on the other. The laws regulating the appointment or apportionment of cadets at West Point, and of midshipmen at the Naval School at Annapolis, requiring them to be made in equal ratio from the several congressional districts throughout the United States, furnish wise precedents for a similar regulation in regard to appointments in the Executive departments, and those laws are in accordance with the spirit and genius of our institutions. All sections of the Union are called upon to furnish, in just proportion, the officers of the army and navy, and to this fact may be attributed the harmony and efficiency of our military and naval forces. The glory of every achievement is thus brought home to every neighborhood and village in the land. So in the legislative department. The sentiments and feelings, the wisdom and intelligence, the prejudices and the patriotism of every city and county, however remote, are brought into the halls of Congress by the "inhabitants" thereof.

Why should not the same principle apply to the appointments of the executive departments? The committee believe that the best results would be produced by such a regulation. By selecting men from different portions of the Union you stimulate a just and laudable ambition among them. The feeling of attachment to home and its surroundings is natural and worthy of commendation, and the hope of reflecting honor and the fear of casting disgrace upon the community with which one is particularly identified are among the strongest incentives to virtue and integrity. A further consideration for the adoption of this measure may be found in the good that may be reasonably expected to result from bringing together so large a number of gentlemen from all the States and Territories, to be associated in the common occupation of carrying on the business of the government. Friendships and intimacies and various social relations will naturally spring up amongst them, which will be radiated through their various connexions to the remotest confines of the Union, adding strength and vitality to that enlarged patriotism which embraces our whole country.

The committee recommend the passage of the bill.

FREE TRADE.

MAY 19, 1858.—Committed to the Committee of the Whole on the state of the Union.

Mr. BOYCE, from the Special Committee, submitted the following

REPORT.

The Special Committee, to whom were referred the following subjects: A reduction of the expenditures of the government; the navigation laws; the existing duties on imports; the expediency of a gradual repeal of all duties on imports, and a resort exclusively to internal taxation, respectfully submit the following report:

The expenditures for the fiscal year ending June 30, 1857, independent of the public debt, as appears from the report of the Secretary of the Treasury, are \$65,032,597 76.

The first question is, whether those expenditures are greater than what they should be under an economical administration of the government. We think they are. The best mode of determining this question is to compare the present total expenditures of the government with the total expenditures of the government at some past period of our history, and, further, to compare some of the leading items of our expenditure now with the leading items of our expenditure then. With this view, we have compared the receipts and expenditures of 1857 with 1823, the result of which appears by the following statement:

Year.	Population.	Receipts.	Receipts, pro rata, as to population.	Expenditures.	Expenditures, pro rata, as to population.	Military expenditures.	Naval expenditures.
1823	10,606,540	\$30,540,666 26	\$1 93.66	\$9,764,154 59	\$0 94.24	\$3,006,924 43	\$2,503,765 83
1857	28,500,000	68,969,212 57	1 41.99	65,032,559 76	2 28.18	19,159,150 87	12,651,694 61
Inc. of 1857 over 1823	17,893,460	48,428,546 31	46.33	55,268,405 17	1 33.94	16,062,226 44	10,147,928 78

If space would permit, the contrast might be carried into many other items of expenditure, and the results would be startling. But enough has been done to show that the ratio of expenditure is far in excess of the increase of population. The expenditures ought not, for very obvious reasons, to increase in proportion to the increase of

population. But conceding that it should, the expenditures of the government, in round numbers, should not exceed \$28,000,000; whereas it is \$65,032,559 76—an excess of \$37,032,559 76. This result is sufficiently striking, but it is rendered much more so when we consider two important facts: 1st. That 6,196,000 acres of the public land were granted during the last fiscal year for railroad purposes, which may be valued at \$15,490,000, being at the rate of \$2 50 per acre. 2d. That appropriations to supply the deficiencies of the last fiscal year have been called for, amounting, in round numbers, to \$10,000,000, making the total expenditures of the government, in round numbers, for the last fiscal year, \$90,000,000!—an excess over the ratio of expenditures in 1823 of \$62,000,000. The administration of the government in 1823 was not considered peculiarly economical; on the contrary, it was pronounced at the time by some as extravagant, and really was much more so than the first term of Mr. Jefferson's administration. For a further illustration of the increased expenditures of the government, see exhibit A, at the end of the report.

Considering as established the proposition that the expenditures of the government are far in excess of what they should be, we pass on to consider the remedy, if remedy there be, for this lavish waste of the public money.

What is the remedy for this vast and increasing expenditure? The only remedy likely, in any degree, to be effectual is to change the existing system of taxation. The regular increase of our expenditures shows that it is not attributable to any particular party or administration, for this increase has gone on constantly under every party and every administration, with the regularity of a great principle. To make an individual a prodigal, you have only to supply him with an unlimited amount of money; to make a government extravagant, you have only to do the same thing. The first economical defect of our present system of taxation, by duties on imports, is, that it operates as a bounty to one, and that a very important class—the manufacturers.

Under the operation of this first defect, the great manufacturing class, which represents a vast capital, which is intensely alive to its peculiar interest, which is vigilant, active, powerful, and capable of prompt and ready combination, is interested in increasing the taxation of the government; for the higher the taxes are, if laid on the principle of protecting their products, the better for them. Suppose the question were submitted to the cotton manufacturers, or the iron manufacturers, whether the duties on cotton and iron products should be increased or diminished, does any one doubt what their answer would be? So far as they are concerned, they consider high duties as bounties to them, and they would be in favor of them, if the revenues thereby derived were thrown into the sea. Under the present system of taxation by duties on imports, this great class are favorable to high taxation. To form some idea of the stupendous magnitude of this manufacturing interest, take the following statement, showing the value of the products of manufacture of the United States for the year 1850.—Financial Report, Executive Document, 3d sess. 34th Congress, vol. 2, 1856-'57, page 166.)

Statement showing the manufactures of the United States and Territories for the year 1850.

Manufactures of cotton.....	\$61,869,184 00
Manufactures of wool.....	43,207,545 00
Manufactures of pig iron.....	12,748,727 00
Manufactures of iron castings.....	25,108,155 00
Manufactures of iron wrought.....	22,628,771 00
Breweries and distilleries.....	18,213,681 00
Product of the fisheries.....	10,000,182 00
Product of salt manufactures.....	2,222,745 00
Manufactures produced in families.....	27,493,644 00
All other manufactures.....	832,103,265 00
Total value of products of manufactures.....	1,055,595,899 00

This reference to the products of manufactures may give us some idea of the immense capital engaged in manufactures. This capital may be estimated at \$500,000,000.

This vast capital is all more or less interested in high duties—that is, in high taxation. The influence of the manufacturing class on taxation is not merely in proportion to the capital they represent, as compared with the capital engaged in other industrial pursuits; for, from very obvious reasons, some of which have already been incidentally alluded to, it is far beyond this ratio. As an illustration of this influence, we would refer to the facts connected with the modification of the tariff during the last Congress. It is notorious that the only great interest represented here at that time by outside agents was the manufacturing interest. One of the first steps towards an economical administration of the government is to place that great and active interest permanently on the side of low taxation, and the only effectual mode of doing this is direct taxation; which necessarily implies the total abandonment of protective duties, which are but another name for bounties. When you have put all the great interests of capital on the side of low taxes, you have taken one of the most decided steps that you can possibly take in favor of low taxation, which is the necessary antecedent of economy.

The next prominent evil of the present system of taxation, is that, by its indirect operation, the people are ignorant of what they pay. They are ignorant of what they pay to the government, and equally ignorant of what they pay to the protected interests in the shape of bounties. If the object be to obtain from the people the largest amount possible without arousing them, then the indirect system—the present system—is the best; but if the object be only to obtain from them the least amount that will suffice for the just wants of the government, then the direct system of taxation is the best. The happy ignorance of the people of the United States as to the amount of taxes they are paying is one great cause of their remaining so passive under the enormous increase of our expenditures which has been going on for years. If we desire an economical government, we must be candid with the people, and let each one know exactly what

he pays. The people, ignorant of how much tax they are paying in the enhanced price of commodities, will tolerate an expenditure of \$100,000,000 much more patiently than one of \$50,000,000, when each one has to pay his ascertained share directly from his own pocket. Economy here must be preceded by vigilance among the constituency; as long as the constituency are indifferent on this subject, the representatives will be carried along unresisting in the vortex of extravagance.

Another objection to the present system is the large expenditure necessary in the present mode of collecting the revenue, in paying the army of employes engaged in the present revenue service, in building costly structures in various parts of the United States, and in maintaining custom-houses which do not pay their own expenses. Upon this point we would call attention to the following facts: The direct cost of collecting the revenue from customs for the last fiscal year, ending June 30, 1857, \$64,171,034 05, was \$3,552,359 50, employing three thousand and eighty-eight officers. This is independent of the cost of the custom-houses and revenue cutters, the interest upon which investment would largely increase this sum.

To see further the operation of the present system, take the following statement:

Amount of revenue collected, and expenditures at certain custom-houses, for the fiscal year ending June 30, 1857.

Location.	Revenue collected.	Expenditures.	Excess of expenditure over revenue.
Belfast, Maine.....	\$5,052 05	\$6,012 87	\$960 82
Waldoboro', Maine.....	1,368 02	7,547 14	6,179 12
Wiscasset, Maine.....	130 93	7,359 09	7,228 16
Burlington, Vermont.....	8,581 70	16,285 47	7,703 77
Barnstable, Massachusetts.....	1,462 75	11,953 20	10,490 45
Sandusky, Ohio.....	567 84	4,372 66	3,804 82
Elsworth, Maine.....	954 96	5,032 09	4,077 13
Portsmouth, New Hampshire.....	5,530 54	10,984 49	5,453 95
Buffalo, New York.....	10,140 53	16,896 51	6,755 98
Oswego, New York.....	6,149 09	18,214 58	12,065 49
Newark, New Jersey.....	384 30	1,595 55	1,212 25
Pensacola, Florida.....	478 73	3,012 62	2,533 89
Perth Amboy, New Jersey.....	1,531 73	4,471 79	2,940 06
Astoria, Oregon.....	4,173 64	21,254 51	17,080 87
Machias, Maine.....	608 71	2,605 72	1,997 01
Plymouth, Massachusetts.....	395 12	3,216 04	2,820 92
Bridgeport, Connecticut.....	805 44	1,766 24	960 80
Annapolis, Maryland.....	180 75	929 20	748 45
Peoria, Illinois.....	210 20	363 60	153 40

The total net revenue from the following eighteen custom-houses for last fiscal year, viz: Belfast, Bath, Bangor, Portland, Waldoboro', Wiscasset, Burlington, Barnstable, Gloucester, Bristol, Providence, Plattsburg, Wilmington, Del., Pittsburg, Cincinnati, Sandusky, Toledo, and San Francisco, was \$1,769,163 43. The total cost of

the public buildings in those places for custom-houses, post offices, and court-rooms finished since 1850, is \$2,443,776 94. The total expenditure incurred for the last fiscal year in collecting said net income of \$1,769,163 43 was \$567,839 02.

Another defect of the present system is the immense patronage it gives to the federal government. This army of officers might, by each State paying over its assessed quota, be almost entirely dispensed with. Instead of three thousand and eighty-eight employes now in the revenue system, we need, under a different system, have no more than one treasurer in each State. Another prominent defect of the present system is its necessary inequality; for no tariff can be constructed that does not, in a greater or less degree, operate as a bounty on one portion of the community and as a double tax on the great class of consumers. It requires no argument to prove that in a republic there should be equality in taxation; the Constitution attempts to accomplish this purpose in declaring that "all duties, imposts, and excises, shall be uniform throughout the United States." But every tariff, in a greater or less degree, must necessarily violate the spirit of this provision. Another defect of the present system is, that it necessarily cripples the productive energies of the country by interposing obstacles to the free exchange of products. It is difficult to estimate the extent of loss resulting from this cause; but there can be no doubt it amounts to a vast sum. This tax on exchanges is a great obstacle to the highest development of our industrial resources. To form some idea of the loss occasioned to the country by the obstacles interposed to free exchanges by the tariff system, take the following estimate: In 1856 the cotton, woolen, and iron manufactures and sugar produced and consumed in the United States were enhanced in price by the tariff \$39,975,985. This was the amount of the indirect tax paid to the home producers of the above articles. In 1846 the Secretary of the Treasury estimated the indirect tax then paid on the enhanced prices of home products, caused by the tariff, at \$50,000,000. To be within moderate limits, we have reduced the estimate to \$30,000,000. In 1832 it was estimated that the amount of indirect tax paid up to that time to the home producers of protected products was \$240,000,000. Starting with that estimate, and putting the amount of this indirect tax down to only \$30,000,000 per annum since that time, we have, in round numbers, up to the present time, as the total amount of the indirect tax, \$1,000,000,000, which the consumers of the United States have had to pay for the luxury of persisting in an industrial blunder.

As regards the navigation laws, we do not think it necessary to go into a detailed examination of their various provisions, especially as a bill has been reported to the House, and is now before it, from one of the standing committees, for the purpose of perfecting the details of the present code of navigation laws. In general terms, however, we would say that the present regulations are unnecessarily complex, and might, with great advantage, be simplified. There are, however, several defects in principle, as we conceive, in the navigation laws, to which we propose to call attention; those defects are as follows:

1. The requisition that American vessels engaged in the coasting

trade should pay 50 cents per ton unless "three-fourths of the crew are American citizens, then only 6 cents per ton;" and the further provision that American vessels, entering from foreign ports, to pay 50 cents per ton unless "the officers and two-thirds of the crew are American citizens."

2. The exclusion of foreign built vessels, though owned by American citizens, from engaging, with entire equality, in the coasting and other trade of the United States.

3. The entire exclusion of foreign vessels, owned by foreigners, from the coasting trade.

The object of the requisition that a certain proportion of the crews of American vessels should be Americans, was, no doubt, intended to accomplish a political purpose, eminently proper in itself, to provide an American marine in time of war. We find no fault with the motive, but we think this provision, which operates frequently as a great practical inconvenience, is unnecessary. The occupation of a sea-faring life should be left, like all other employments, to the inclinations or interests of the people. If it is to the interests of our population that they should go to sea, they will do so; otherwise, we should not endeavor to compel them. There is no danger that we should suffer in case of war from repealing this provision. That patriotic class of our citizens who have, on all occasions, honorably sustained the glory of our flag on the sea, do not take their inspiration from this provision. We have no fear but that, with or without this provision, there will be always the material out of which to organize a warlike marine, necessary to the wants of the country, under the most trying circumstances that can arise. Even with this provision a large per centage, 45 or 50 per cent., of our sea-faring men are foreigners. This provision, then, operates only as an unnecessary burden on the country during peace, without promising any adequate compensating result in time of war. Further, it may admit of grave consideration whether we would not strengthen ourselves, in case of war, by encouraging foreign sailors to come into our marine, as, once entered, they become, for all practical purposes, American sailors. Advancing firmly in the line of industrial freedom, and with a view of throwing off every possible shackle on the industrial energies of the country, we think this provision should be rescinded.

As regards the second defect alluded to in the law, by which foreign built vessels, though owned by American citizens, are not admitted to entire equality, unless purchased after shipwreck, and repaired to the extent of three-fourths of their cost, we consider this rests upon a totally indefensible principle. It is giving to American ship-builders a perfect monopoly. We can see no ground of justice upon which this monopoly can rest. Every American citizen ought to have the privilege to buy ships wherever he can buy them to the best advantage. To compel him to buy from American ship-builders at an enhanced price is, to the extent of that enhanced price, to confiscate his property, and transfer it to another. Such a monopoly is utterly inconsistent with the spirit of our institutions. Our ship-builders have a right to equality; they have no right to exclusive privileges. As a question of expediency, it seems equally indefensible. Either American built ships are cheaper

or dearer than foreign built. If they are cheaper, they do not need this prohibition of foreign purchase. If they are dearer, they do not deserve it. It is the interest of the great mass of the people of the United States, both producers and consumers, to have ships cheap, for the price of ships enters as an element in the cost of transportation. This monopoly either makes ships dearer, and enhances the cost of transportation, or it is useless. If it makes ships dearer, and enhances the cost of transportation, it should be abolished. If it accomplishes nothing, it is useless, and should not encumber the statute books. We have reason to believe the removal of this monopoly would permit ships to be bought cheaper. In a debate upon this subject, growing out of certain propositions made by the British government to our government on this and kindred subjects, it was conceded in debate here, by a distinguished member from the city of New York, (Hon. E. BROOKS.) that ships could be built in the British provinces "some twenty per cent. or more cheaper than in New England or New York." This monopoly ought to be abolished in the interest of the commerce, manufactures, and agriculture of the country.

As regards the next defect in our navigation laws—the prohibition of the coasting trade to foreign ships—this is another monopoly which we conceive to be unjust and inexpedient, and which ought to be abolished.

If there be any one thing in which all the people of the United States, all classes, and all industrial pursuits of all sections, except the one class of ship owners, are interested in, it is in cheap sea transportation. When we consider the vast value of the products of the United States which are carried by water coastwise on both our Atlantic and Pacific coasts, the Gulf of Mexico, and the great lakes—some estimate of which may be formed from considering that the amount of tonnage engaged in this transportation is 2,247,663 74 tons, nearly one-half of the total tonnage of the United States—we can readily see how important is the element of cheap transportation. The only practical mode of attaining this result is competition, and yet we resolutely turn our backs upon this principle and persevere in a monopoly. We are clear that our navigation laws should be modified in this respect.

The policy of our navigation laws was borrowed from England, when their wisdom, though in violation, confessedly, of the great principles we announced, was sustained even by Adam Smith, the great architect of the modern system of political economy. Yet England, after clinging to these laws for centuries as one of the anchors of her safety, has within a few years, under the influence of more enlightened principles, abandoned them.

As regards the present tariff, we think its principal defects are—

1. That too large a proportion of the duties is thrown on articles of prime necessity. For instance, nearly one-half of the present revenue is raised from duties on cotton, woollen, iron manufactures, and sugar. These articles are indispensable to the great mass of the people, the laboring classes, so that an undue portion of the burden of taxation is thrown on the laboring classes. To reduce duties on ar-

ticles of necessity, is, in effect, to increase wages, as the same wages will go further.

2. It is protective in its character, as is obvious from the following considerations: Ordinary cotton manufactures pay 24 per cent., bagging pays 15, but all bleached, printed, painted or dyed cotton goods and de laines pay 30 per cent. Manufacturers of iron pay 24; pig, bar, sheet and all other iron, 24. Woolen manufacturers pay 24, except flannels and baizes, which pay 19. Sugars of all kinds, 24 per cent. Manufacturers of silks pay 19 per cent. Adzes pay 24 per cent. Blacksmiths' hammers and sledges, 24; boots and bootees, for men or women, 24. The fact that silk manufactures, used by the rich, pay 19 per cent., and cotton, woolen, iron manufactures—manufactures indispensable to the industry of the country—pay 24 and 30 per cent., when 20 per cent may be assumed as the highest revenue standard of duty on these articles, indicate the deference paid to the principle of protection. A minute analysis of the present tariff will only further illustrate this fact.

3. There are certain imports on the free list which should not be there, as, for instance, tea and coffee. These articles, tea and coffee, are peculiarly suited for taxation. They are not produced in this country, therefore there would be no indirect tax paid on them. They are of general consumption, and a tax upon them, besides furnishing an addition to our income, now much needed, would fall equally on all classes and sections.

The reason of placing these articles on the free list is obvious enough. It is to prevent the necessity of reduction on such articles introduced from abroad as enter into competition with similar home products. By diminishing the free list, we could diminish the general rate of duty on many articles entering into universal consumption.

If the policy of collecting the revenue of the government by duties on imports is to be continued, we think the tariff should be modified on the following principles:

1. A total abandonment of the policy of protection. No duty should be laid with the view of protecting any form of industry. The tariff should be considered purely as a fiscal instrumentality. We have no idea that any tariff can be instituted that will not in some degree, either more or less, operate in a protective character. Such will be the unavoidable effect of all duties on articles of a similar nature to home products. And the production of this effect becomes constantly greater, from the fact that the cost of production is steadily decreasing in this country, from the increase of population and capital, aided by the increase of skill and improvements in the processes of production. From this cause a lower rate of duty will operate protectively now, to what it did twenty years ago. The operation of this principle constitutes one of our objections to any tariff, as we would wish so to regulate taxation as that no class should, in any degree, derive benefit from it as a bounty.

2. Articles of prime necessity should be taxed at the lowest rate of duty, and articles of luxury at the highest revenue standard. The reasons of this are so obvious that we do not think it necessary to

enlarge upon them. Our purpose would be to relieve the producing classes as much as possible from the burdens of taxation.

3. The free list should be confined to such articles as furnish so inconsiderable an amount of revenue as not to remunerate for the trouble and expense of collection, and the raw material of domestic manufactures. According to this principle, tea and coffee should be required to pay duty. As regards the exemption of the raw materials of manufactures, this, while a benefit to the home manufacturer, would operate no injury to any class, as the effect would only be to cheapen production, an advantage which would be shared by all the consumers—that is, by the great mass of the people. Upon this point of the free list, we submit the following statement showing what amount of revenue might be derived from laying a duty of 20 per cent. on certain articles which now pay no duty.

Statement exhibiting the amount of duties that would have accrued upon "certain articles of general consumption," admitted free of duty during the fiscal year ending June 30, 1857, had 20 per centum ad valorem been charged upon them.

Articles.	Value.	Duties.
Teas.....	\$5,757,860	\$1,151,572 00
Coffee.....	22,386 879	4,477,375 80
Copper, in plates, suited to the sheathing of vessels.....	351,311	70,262 20
Copper ore.....	1,440,314	288,062 80
Sheathing metal.....	748,372	149,674 40
Garden seeds, trees, shrubs, plants, &c.....	386,504	77,300 80
Total.....	31,071,240	6,214,248 00

We now approach the subject of direct taxation.

The first purpose is, to understand exactly what is meant by this system.

The Constitution provides:

"Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

"No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken."

"All duties, imposts, and excises shall be uniform throughout the United States."

Judge Story, commenting on these clauses, says:

"What are direct taxes, in the sense of the Constitution, since they are required to be laid by the rule of apportionment? It is clear that capitation taxes, or, as they are more commonly called, poll taxes—that is taxes upon the polls, heads, or persons of the contributors—are

direct taxes, for the Constitution has expressly enumerated them as such. 'No capitation or other direct tax shall be laid,' &c., is the language of that instrument. Taxes on lands, houses, and other permanent real estate, or on parts or appurtenances thereof, have always been deemed of the same character—that is, direct taxes. It has been seriously doubted if, in the sense of the Constitution, any taxes are direct taxes, except those on polls or lands."—(Story Com. Const.)

"In the year 1794 Congress passed an act laying duties upon carriages—for every coach, &c., &c., the yearly sum of ten dollars—and made the levy uniform throughout the United States. The constitutionality of the act was contested in the case of *Hylton vs. United States*, 3 Dall. R., 171, upon the ground that it was a direct tax, and so ought to be apportioned among the States, according to their numbers. After solemn argument, the Supreme Court decided that it was not a direct tax within the meaning of the Constitution."—(Story Com. Const.)

Without committing ourselves to the correctness of Judge Story's opinion and the decision of the Supreme Court, as to what taxes are direct, we do not propose to legislate in conflict with such distinction.

It would seem, from the decisions of the Supreme Court, that the only direct taxes, in the sense of the Constitution, are taxes on persons and lands. These taxes are to be laid by the rule of apportionment; that is to say, each State will pay such an amount of the entire tax to be collected as the proportion its population bears to the entire population of all the States, deducting two-fifths of the slaves. All other internal taxes, except the taxes on lands and persons, would be laid according to the rule of uniformity.

Such being the law, as now expounded, upon the subject of internal taxes, which includes as well direct taxes, in the sense of the Constitution, as all other taxes of that character, the practical system which we would recommend would be as follows:

Ascertain the total amount needed for the government. Apportion that among the States, according to the rule of apportionment, and let each State collect its quota in its own way, and pay over such quota, deducting the reasonable expenses of collection.

The advantages of this system would be—

1. Perfect equality, according to the provisions of the Constitution, in the burdens of taxation. The moral effects of this perfect constitutional equality could not well be overestimated. No State, no section could complain of paying an undue share; for each State, loyal to the Constitution, could not but be satisfied with the equality of the Constitution. There could be no longer any complaint of class taxation. The apportionment would simply be the result of an arithmetical calculation, in pursuance of the rule prescribed by the Constitution. The vast enlargement of the republic, and the increase of States, inculcates most strongly the benefits of removing all causes of complaints, as to the inequality of taxation, by establishing the system of equality laid down in the Constitution.

The only objection to this mode of collecting the taxes is, that possibly some of the States might refuse to collect their quota. But this

objection could be surmounted by the federal government collecting the quota of such State by its own fiscal agents.

2. This system of each State collecting its own quota would dispense with the services of at least three thousand federal officers who are necessary under the present system. Under the proposed system a United States sub-treasurer in each State would be amply sufficient. The advantages of this incidental consequence would be very great, indeed, for one of the dangers of our federal system of government is its vast patronage. The effect of this vast and necessarily increasing patronage is to augment the dangers of the presidential elections. The fierce struggles arising every four years, with increasing violence, for the possession of the government, derive a great deal of their intensity from the extensive patronage in the gift of the administration. The diminution of that patronage, one of the necessary evils of our system, cannot but recommend itself to every lover of his country.

3. Another advantage of a direct system of taxation is the fact, obvious from many considerations, which we do not now propose to enlarge upon, that the least amount possible of taxation will be imposed on the people, who, knowing precisely what they pay, will become more vigilant on this point, and naturally insist on the utmost economy in the expenditures of the government.

4. Another advantage of direct taxation, perhaps not inferior to any which has been mentioned, is that it will be the least interference possible with the industry of the country. Under this system, and under this system alone, industry will be left perfectly free, and we can attain the great point of entire free trade. This involves a more extended consideration of this branch of the subject.

The doctrine of free trade, or, as it may more comprehensively be called, free exchanges, rests upon the great principle of justice. Every individual has a right to use his labor in the manner most to his own advantage, provided he violates the right of no other person. Individuals cannot enjoy this right effectually, unless they are permitted to exchange the fruits of their labor to the best advantage. Government, therefore, has no right to interfere by protective or prohibitory duties, and compel one portion of the community to exchange the fruits of their industry, their products, with another class of the community on less advantageous terms than they could exchange them with foreigners. For instance: Government cannot rightfully, by protective duties, compel the wheat growers of Ohio to exchange their wheat for a less value of goods manufactured in New England than they could obtain by exchange with English manufacturers. To do so, is to commit a spoliation on the wheat growers of Ohio for the benefit of the New England manufacturers. To the degree that these wheat growers are compelled by such protective duties to exchange their products for a less value, to that extent a spoliation is committed upon them. Suppose government should say that labor should not receive more than a certain amount of wages as its recompense, no one could doubt but that this would be an act of the greatest injustice; that to the extent to which labor would be compelled to receive a less amount than it would obtain if not forbidden, that to that extent there would be confiscation. Every fair mind would at once revolt against such legislation as this; yet what difference is there, in princi-

ple, or the practical consequences, between this prohibition of full wages and the prohibition to exchange the products of labor to the best advantage? None whatever. They are only different modes of attaining the same end.

One of the leading purposes for which government is constituted is the protection of property. The only property which a large portion, perhaps a majority, of the people of every government possess, is the product of their own labor. The right of labor is the great property right of every society. This sacred property right of labor can only be fully enjoyed by freedom of exchanges. If this freedom of exchanges is interrupted by government, not for fiscal purposes, but for alleged industrial purposes, to give a monopoly to certain forms of industry, then a blow is struck at the right of labor. It is in this light that the protective policy is so odious as an infringement of the rights of labor. If there be any right in this country which this government should respect, it should be the right of labor. Any legislation against this right, by which it is, in any degree injured or abridged, is in violation of justice and the spirit of our republican institutions. The protective policy does infringe upon this right of labor, for it diminishes the value of a large portion of the labor of the country by prohibiting such labor from exchanging its products to the best advantage. It is in this view of justice to labor, respect for this great and only property right of the toiling millions, that free exchange recommends itself so strongly. No industrial system can be right which reposes, as its corner-stone, upon a great injustice. The protective system, as necessarily being founded upon the idea of compulsory, involuntary, and inadequate exchanges, necessarily rests upon a great, undenied, undeniable, and startling injustice, which should not be tolerated in this age and in this country.

So far we have considered the question of free exchanges on the ground of right. It is now proposed to consider it on the ground of expediency.

The doctrine of free exchanges rests on one great industrial maxim, that individuals are better judges of their monetary interests than government can be; and if industry is left perfectly free, it will, as a general rule, take the wisest direction. This maxim is either true, or it is false. If it is true, then protection—that is, interference with industry—is unwise. If it is false, then protection is wise. Now, is it true or false? for upon this question rests the protective policy. That this maxim is true, appears from the slightest consideration. There are two elements in production, capital and labor, without which industry—the process of production, would not exist. Capital is, of all the social elements, the most sagacious. Capital may be said to represent the common sense of mankind more than any other element of civilization. Capital, in obedience to the great principle of common sense, which it represents, instinctively seeks the profitable, and shrinks from the unprofitable. Profit is the genius of capital—its mind, body, soul, heart; and capital, under these dominating instincts, as naturally turns from loss to gain as the magnetic needle from the south to the north. So far as this great element of production is concerned, there needs no interference of government to give it direction. Its nature is to take the best course. So far as labor, the other element

of production, is concerned, its natural instincts may, likewise, be relied on to pursue profit. Men do not labor for nothing. They labor for gain, what we call wages. Unless they could get wages, they would not labor; they would prefer to do nothing. Labor is unpleasant, and all men instinctively seek to get the most wages with the least labor. In other words, the natural tendency of labor is to seek profit, and avoid loss. The genius of capital and labor both being so antagonistic to loss, and so attracted to gain, we think we are authorized to take for granted the maxim above announced, that individuals are better judges of their monetary interests than government. If so, then it follows that government ought not to interfere with industry, but leave it perfectly free to work out its own mission.

If these general principles which we have been considering on the policy of protection be conceded, we might rest the argument here, but, as they may still be controverted, we will pursue it further.

The argument for the freedom of exchanges may be stated in two forms, negatively and affirmatively: negatively, by showing the impolicy of the protective policy; affirmatively, by direct considerations recommending it. We do not hope to shed new light upon a question which has been so elaborately discussed by the greatest intellects for nearly a century. We can only hope to popularize some of the most forcible views which have been taken.

The practical working of the protective policy is this: imposition of high duties on those foreign products which come in competition with home products, so as to compel the consumers to purchase the home products at enhanced prices. The first fact which arrests our attention from this statement is, that the foreign products are furnished cheaper than the rival home products, as otherwise there would be no use for the high duties. The practical effect of this, then, is, that the consumers are prevented, by governmental interference, from buying cheap. This seems to be a very singular effect for government to aim at, because individual wisdom always suggests the idea of buying cheap. All men of ordinary sagacity, in the management of their private affairs, invariably endeavor to buy cheap. Individuals who would act upon a different principle would be considered fit subjects for a *commision de lunatice inquirendo*. Now, it is very strange that laws should be made by government to prevent men buying cheap. If it be wise for individuals to buy cheap, why is it not wise for the whole nation to buy cheap? The very first step of the protectionists seems to be founded in a negation of the universal practice and experience of mankind in their individual relations.

It is sometimes denied that protective duties increase the price of the home product. But there can be no dispute upon this point, for, unless the protective duties increase the price of the home product, what is the use of the duty? There is no other possible mode in which the duty can operate in favor of the home producer, except by increasing prices. If it does not accomplish this effect, then the duty is inoperative. But the tenacity with which the protectionists cling to the duty shows that it is efficacious. If the duty on the foreign product does not increase the price of the home product, then there can be no objection to reducing or abolishing the duty. But the opposition to reduction of duty on the part of the home producer,

whose only object is high prices, demonstrates the effect produced. Higher prices for the home product implies the expenditure of a greater amount of labor to accomplish the same purpose, for labor is the true measure of value. If it be considered wise to waste labor, then the policy of compelling the consumer to buy at a higher price from the home producer is defensible; otherwise, it is not. The very civilization we enjoy is the fruit of labor-saving appliances. If we are superior to the barbarians, it is because we can accomplish more by our labor than they can. The highest development of society is the accomplishment of the greatest results with the least labor. It is for this reason that the great discoveries in the arts and sciences, magnifying to an almost incalculable extent the productive powers of human labor, have conferred such vast benefits on mankind. Strike from existence our labor-saving discoveries, our steam engines, our railroads, our magnetic telegraphs, our innumerable labor-saving appliances, and we have relapsed into barbarism. The saving of labor is not merely the genius of civilization, but civilization itself. Any policy, then, by which this humanizing process of saving labor is abridged, is not merely a pause in the onward movement of society, but a step backwards. The protective policy, then, as raising prices to the consumer, which is the same thing as requiring more labor to accomplish a given result, and thus, as attacking the problem of saving labor, is antagonistic to the great social progress of the civilized world.

Again: the protected forms of industry are either profitable or unprofitable. If they are profitable, they do not need protection; if they are unprofitable, they do not merit it; for the idea of legislating to turn capital into unprofitable channels in this country is, of all absurdities, the greatest. Look at our country, a vast continent, extending from one great ocean to another great ocean, resting on the south upon the great American gulf, and on the north upon a chain of vast lakes, with every variety of soil and climate, a vast portion of it in its virgin condition, only needing development, and promising in its development the richest returns. Does it not seem, when such vast fields of production—in commerce, in agriculture, in mining—lay inviting before us, that of all things in the world we need not hunt out and legislate to force unprofitable pursuits. In no country in the world is there such an extended field for the application of capital and labor productively as in our country. Then why not let capital and labor take spontaneously their natural direction? Why strive to force them by governmental action into barren channels?

In this connexion we would allude to a great fact, which should never be lost sight of, that the protective policy does not increase capital; it only gives it a new direction. The capital remains the same after you have passed your protective laws as it did before; you only force it into new directions. If by your legislation you could increase the capital of the country, then there might be some reason for your legislation; but as all your laws do not increase by a single dollar the amount of capital, how futile are your efforts for good!

The popular fallacy on which the protective policy rests is the encouragement of home industry. It is true you may build up certain forms of industry, but, in doing so, you have done it at the expense of other

forms of industry. If, for instance, you have developed the woolen manufacture by high duties and raising the prices of woolen goods, you have done so at the expense of the other industrial classes which consume those woollens ; for you have compelled them to give a higher price for their woollens ; and to the extent of this enhanced price, you have discouraged them in their industry. The most effectual protection of home industry is to let every form of industry attain its most profitable results. This you can only do by permitting freedom of exchanges. Then every form of industry exchanges its fruits to the best advantage, and consequently derives the most profit.

Protection does not increase the rate of wages, and this from a very obvious reason, because the competition among the protected forms of industry prevents profits from remaining permanently higher than the average rate of the profits of capital in the country generally ; and therefore the wages in the protected forms of industry cannot be higher than the ordinary wages of the country. The facts in reference to wages in the protected forms of industry in this country bear out the theoretical proposition laid down upon the subject ; for, as is well known to all who are familiar with this branch of the subject, the wages of manufacturing laborers is in no degree above the average wages in other forms of industry.

It is a singular fact, that while we hear so much on this point of protecting American industry, no one, not even the most jealous protectionist, has taken any exception to the free introduction of foreign labor. That is foreign competition by the very firesides of our laboring classes. Their so-called peculiar friends take no steps to discourage this competition, the necessary effect of which is to decrease wages. To estimate the extent of the competition from this cause, it is only necessary to refer to the number of immigrants who have entered this country from 1843 to 1853. The statistics of immigration show that within that period 3,174,395 immigrants arrived in the United States from foreign countries.

But, during all this period, no complaint has been uttered by the peculiar friends of home industry, the protectionists. Why was this? The reason is sufficiently obvious : because the protective policy is designed to benefit the capitalists, and is not urged in the interest of the laboring classes, though that popular sentiment is assumed. Nothing could more thoroughly demonstrate the falsity of the assumption that protection is designed for the benefit of the laboring classes, than the stubborn fact that the protectionists have made no efforts to discourage the immigration of foreign laborers, but, on the contrary, have steadily encouraged the same, when the necessary effect was to diminish the wages of labor. There are only two modes of increasing the rate of wages :

1. By increasing the amount of capital.
2. By diminishing the quantity of labor.

The protectionists do not increase capital ; but, by encouraging immigration, increasing the quantity of labor, they necessarily diminish wages. They do not wish foreign products introduced, because that jars upon them ; they favor the introduction of foreigners because that, while it jars upon the American laboring classes, benefits them. While we do not propose to exclude the foreigner, nor to discourage

his immigration, we desire to strip from the protective policy the delusive pretence that it is urged to protect home industry, in the face of the fact that foreign immigration is encouraged, with its necessary consequence of diminishing wages.

The protectionists insist upon their policy as necessary to make us independent of foreign powers. This is a very pretty phase ; but when we examine the rationale of it it is not so captivating. Dependence on foreign nations only amounts to this : that, by exchanging our products with them, we get what we want cheaper ; by being independent, we get what we want dearer ; because, if we buy from foreigners, it is because they can furnish us cheaper than we can supply ourselves ; otherwise, we would not buy from them. This dependence, which rests upon the idea of getting the best bargains, cannot be very injurious ; and that independence which consists in buying at the highest prices is not very attractive. But independence is entirely a relative term ; if we, in order to make ourselves independent of foreigners, refuse to buy from them, they cannot buy from us ; so that, in making ourselves independent of them, we have compelled them to become independent of us. If we have no importations, there can be no exportations. Commerce is the exchange of products. If we will not receive the products of the foreigner, then we lay an embargo on our own products. What do we gain by independence of foreigners, but the privilege of laboring harder to attain the same results ? Then, do we get any better treatment from our home producer than from the foreign producer ? The home producer will get all he can out of us ; the foreign producer can do no more. Experience does not show that the home producer lavishes any more generosity upon us than the foreigner. It is only a question of profit with both classes of producers. Free trade gives us the chance of competition. Protection restricts our range of purchase, and forces us to buy from the home producer.

The leading error of the protective policy is having regard only to the interest of the producer. It undertakes to promote the prosperity of certain favored home producers by insuring them high prices. On the contrary, the great object to be regarded is the interest of the consumers. The object of all production is consumption. The protected producers are, comparatively, a small class ; the consumers are the great mass of the people—every body. The true purpose, therefore, should be to promote, as far as possible, the interests of the consumers. The interests of the consumers consist in cheap production, attainable only by entire freedom of exchanges. Upon cheapness of production depends the well-being of the great mass of the people. It is for this reason that the great improvements in machinery, made in the last century, have been so beneficial to mankind. To cheapen food and clothes, for instance, is to confer a direct gratuity on mankind. Instead of increasing the cost of production, our great purpose should be to diminish it as much as possible. To accomplish this, we must turn from protection, the interest of a few producers, to freedom of exchanges, the interest of the large class of consumers.

It requires no extended argument to show that protection is injurious in this country to agriculture and commerce. Agriculture has possession of the home market naturally ; free trade superadds to this the foreign market, increases the demand, and the more the de-

mand is increased the better. Protection excludes the foreign market and leaves only the home market; for if we are prohibited from buying from foreigners, they cannot buy from us. Look at the immense amount of wheat raised in the northwest, which has found a market in Europe within the last five years, greatly to the advantage of the American wheat growers. Carry out your protective policy to its full results, and you cut off American wheat from that foreign market. The same principle which applies to wheat, applies, in a greater or less degree, to all the great agricultural interests of the country. Commerce, by which we mean foreign commerce in this connexion, is nothing but the exchange of our products for foreign products. Its greatest development consists in the greatest freedom of exchanges. Paralyze importations by the protective policy, and you paralyze exportations, and annihilate commerce. Free exchange is only another name for commerce.

Protection is monopoly, and, therefore, anti-republican. It is impossible to protect all classes. You can only protect those forms of industry which produce what foreigners produce. All other classes of the community who do not produce articles in competition with the foreigner cannot be protected. The result is, that you protect one class at the expense of all other classes. You protect the unprofitable forms of industry by throwing burdens on the profitable forms of industry. The only way to protect all classes is to protect none; to let all alone, and use your powers of taxation simply for fiscal purposes. Preserve order, enforce justice, and practice the *laissez nous faire* policy, and you have done the best you can do, in view of the interests of all.

The genius of the age is in nothing so strikingly apparent as in the efforts to overcome all obstacles to exchanges. Look at the great lines of railroads in this country and in Europe, constructed at such immense labor and expense. Look at the steam fleets on the great oceans; the magnetic wires, spread like a net-work of thought over the civilized world, and which we are trying now, like the giants of civilization, to lay down even across the bottom of the Atlantic ocean. What is the object of these stupendous undertakings? Is it not to remove, as far as human power can, the obstacles to free intercourse and free exchanges? And yet what is the protective policy but a self-imposed obstacle to the system of free exchanges? We pause at no labor to remove the obstacles of nature, and then we interpose an artificial obstacle. Strange inconsistency! To understand this in its full force, we must consider that the logical consequence of protection is prohibition. If it is unwise to buy from the foreigner because his product is only twenty per cent. cheaper than the home product, then it is unwise to buy from him though it were a thousand per cent. cheaper. The protective policy carried out to its legitimate conclusions would be non-intercourse with the foreigner, and the inauguration of the Japanese policy. What a termination for our railroads, steam fleets, and magnetic wires!

Such is the protective policy, repudiated by all the great thinkers who have devoted themselves to the subject of political economy, ad-

mitted by almost every intelligent individual to be true in theory, yet disregarded almost habitually by the governing powers.

The great doctrine of free exchanges rests on this simple proposition, that there are two modes of obtaining an article—

1. To make it ;

2. To make something to give in exchange for it ;

and that that is the best way which obtains the desired article with the least labor.

Mankind need certain products. Shall each man make these products himself, or shall he make something to give in exchange for them? Whichever way the purpose can be attained with least labor is the best way.

If we can make something which the foreigner wants, and obtain from him what we want with less labor than we could make it ourselves, shall we not make the exchange? Free trade says we should. The system of free exchanges considers labor as only a means to an end, and adopts that mode by which the end can be most easily attained. Individuals do not think they gain by making their own shoes; they find it to their advantage to patronize the shoemaker. This is the doctrine of free exchanges which we wish to see applied to nations. It is the principle upon which individuals invariably act from a practical knowledge of their own interests. If it is wise for all persons individually, why is it not wise for all collectively? Why should not the government act upon this policy? It should be borne in mind that it is not so important to have manufactures as the products of manufactures. If we can obtain those products with less labor, that is cheaper, by exchanging our own products for them, so much the better.

What we need in this country more than anything else to the highest development of our industrial resources is capital. Free trade virtually gives us this capital, because it gives us the fruits of capital. If we consume the products of five hundred millions of capital in Europe we have, to all practical purposes, got the use of that capital. Freedom of exchange gives us the benefit of a vast foreign capital. To illustrate: suppose that, instead of investing a hundred millions in woolen manufactures, we are supplied with foreign woollens, this leaves the one hundred millions of capital free for other purposes; therefore, we have, in effect, added this much to our capital. Instead, therefore, of envying the advantages of other people, we ought rather to rejoice at them, and, by free exchanges, get all the benefit we can from them.

Free trade allays sectional agitation. The real strength of a government consists in justice. When all classes and sections see that there are no bounties, no monopolies, no class legislation, but, on the other hand, see that there is perfect justice, the government commands the confidence of all. It is difficult to estimate the importance of this confidence. It is the bulwark of a State. Another good effect, which should be referred to in this connexion, is this: By freedom of exchanges, you remove all interest for classes to struggle for the possession of the government. If legislation be the interest of a class, or classes, then each class struggles to get control of the government to legislate for its peculiar benefit. By establishing the principle of

free trade, you relieve our politics entirely from this contestation, so far as the great function of taxation is concerned.

Further, why do we extend our territory? The paramount purpose is the extension of our commerce. Free exchanges give us this extension without the dangers of territorial expansion. Why not, then, take this peaceful course, as beneficial to us, as to all other people. This brings to mind the moral effects of free trade, bringing the different people of the earth nearer together in the bonds of interest and intercourse, thus carrying out the will of God; for why are there such various climates and productions, but to inculcate the dependence of nations upon nations, and compel a unity of interests and continual intercourse. Free trade is the cause of peace. Let it become the common law of nations, and war will be impossible. The present emperor of France, on ascending the throne, announced a memorable sentiment, which has been much repeated, that the empire was peace. This was said in especial reference to Great Britain. But recent events show how hollow is the truce between these countries. The reason of this is plain enough—the ports of France are almost entirely shut against English trade. The consequence is, that England and France are not bound together by material interests; they remain two hostile camps. Waterloo never can be forgotten and peace permanently established until free commercial intercourse originates a new class of ideas and feelings, founded on mutual interests and intercommunication.

Free trade is the dawn of a new era. It is the cause of philanthropy and Christianity. What people more proper to lead in the great movement than the people of the United States? The genius of our institutions is the greatest amount possible of personal freedom. To extend this same degree of freedom to all forms of industry seems to be but a logical deduction from the genius of our institutions. What country better situated for free trade than the United States, occupying the best portion of a great continent, bounding on oceans, gulfs and lakes; situate midway between the great industrial nations of Europe and the teeming and gorgeous East, and in close proximity to the West Indies and South America? We have only to advance under the banner of free trade to command the commerce and invite the capital of the world. By this movement, we would do more for civilization, progress, peace, philanthropy, Christianity, than it has ever been the lot of any people to accomplish by a single act in the history of the world.

We could not conclude this view of the subject without calling attention to the recent inauguration in Great Britain, under the influence of the celebrated anti-corn law league, headed by Cobden, Bright, and other great intellects, of the policy of free trade. Standing as Great Britain does at the head of the great movement of civilization, administered as her government is with such profound wisdom, her example, in this particular, commands our attention, and the remarkable success which has crowned her efforts invites our co-operation.

In 1842 England was in a decline, laboring under a paralysis from the protective policy; her exports diminishing, her revenue falling off, universal stagnation. Fortunately for England, a great party had grown up demanding free trade, under the lead of some of the

greatest thinkers of the age. Sir Robert Peel was prime minister; he was a great man; he comprehended the exigencies of the situation; he saw that longer persistence in the protective policy was madness; he determined to revolutionize the tariff policy of his country. He struck at the very heart of English monopoly; he lowered the duty on corn in spite of the execrations of the aristocracy, satisfied with the blessings of the people. In 1845 he made further advances in free trade. Subsequently, under the administration of Lord John Russell, the duties were greatly reduced, and the celebrated act of navigation repealed. The principle on which these modifications of the English tariff went was the freedom of exchanges, and throwing taxation by the income tax on property. The results of this policy were most beneficial on the revenue and prosperity of the country. Between 1842 and 1853 duties on imports and the excise were reduced over £10,000,000; yet in 1853 the amount yielded from these sources was only £122,411 less than in 1842. By remodelling their tariff in England on the principle of free exchanges, they added £6 000,000 to the revenue, and remitted £16,000,000 to the people. Besides this, the general prosperity of the country advanced in an astonishing ratio.

The total exports of England in 1842 were £47,381,023; in 1853, £93,357,306—ninety-seven per cent. greater than in 1842. Such was the result under an approximation to free trade under the protective policy which existed in full force from 1812 to 1822, a corresponding period of ten years, the results were, total exports in 1812, £41,716,964; in 1822, £36,968,964, exhibiting a decline of thirteen per cent. The exports of England to the United States in 1842 were £3,526,807; in 1852, £16,134,397—an increase of three hundred and fifty-six per cent. In 1857 the exports from Great Britain to the United States were, in round numbers, £26,000,000, showing a steady increase.

But we need not go to England for an illustration of the advantages of free trade. The United States, in their remarkable development, present the most striking illustration of its benefits. The United States have made the most astonishing advancement in material progress of all the people in history, ancient or modern. Of all the causes operative in producing this result, the establishment by the federal Constitution of perfect free trade between all the States of the Union is, beyond doubt, the most efficient. Suppose the energies of the country had been crippled by protective tariffs in every State, it would have taken us centuries to attain our present advancement. We have tested by experience the incalculable advantages of free trade within the wide limits of the United States; why should we hesitate to extend to its utmost expansion a system which has worked so beneficially for us? There can be no good reason for not doing so. By our reciprocity treaty with England—the Marcy-Elgin—treaty we have given the border States of the north practical free trade, in a very great degree, with the neighboring British provinces. The results of that free trade experiment are most encouraging. Let us advance boldly in this direction, and lead the nations of the earth in the great march of industrial progress. Our ancestors declared the freedom of the colonies; let us declare the freedom of exchanges;

the consequences of the second declaration may not be less important or beneficial than the first.

In conclusion, we may be permitted to say that we do not venture to hope that we can inaugurate a new policy on our line of argument immediately. Such radical changes must be the work of time. We aim, therefore, not so much at immediate practical results as to effect public opinion, and thus insure the ultimate triumph of the principle we advocate.

With this view, then, instead of reporting bills for immediate action, we have contented ourselves with formularizing our recommendations in certain resolutions, which are hereto annexed.

W. W. BOYCE, *Chairman*.

1. *Resolved*, That the vast and increasing expenditure of the federal government indicates the necessity of a change in our fiscal system, whereby the protective policy shall be entirely abandoned, and a resort had, at as early a period as may be practical, exclusively to direct taxation.

2. *Resolved*, That the existing tariff is defective, as being founded on the protective policy; as taxing certain articles of prime necessity too high; as not discriminating sufficiently so as to throw the burden of taxation as much as possible on articles of luxury, to the exemption of articles of necessity, and as placing certain articles on the free list which should pay duty; and that any modifications of the tariff which may be made, should be made so as to avoid these defects, and for the purpose of using the tariff merely as a fiscal instrumentality.

3. *Resolved*, That the highest development of the industrial resources of the country is to be attained by the greatest freedom of exchanges, which can only be thoroughly accomplished by the entire abolition of duties on imports, and a resort exclusively to direct taxation.

4. *Resolved*, That the system of direct taxation presenting the most advantages is, for each State to collect and pay over its quota, to be ascertained by the constitutional rule of apportionment; thus insuring perfect equality, and dispensing with multitudes of federal officers.

5. *Resolved*, That the navigation laws should be so modified as not to require any portion of the officers and crews of American ships to be American citizens, and that American citizens shall be free to purchase and sail foreign built ships on an entire equality with American built ships, and that the American coasting trade shall be open on terms of perfect equality to foreign ships.

The undersigned have agreed to grant leave to Mr. Boyce, the chairman, to make a report from the select committee, but they do not wish to be understood as concurring in all its conclusions and arguments, and they ask leave to make a minority report hereafter.

M. R. H. GARNETT,
R. P. TRIPPE.

*Exhibit "A," referred to in the report.**Statement of the receipts and expenditures of the United States during*

Years.	Population, as shown by the official census.	Increase of population.	Per centum of increase.	Receipts of the government			
				Customs.	Internal revenue.	Direct taxes.	Postage.
1790*.....	3,929,897	.....	.....	\$4,369,473 09	.....	.....	.....
1800.....	5,305,695	1,376,098	35.01	9,080,839 73	\$809,396 55	\$734,293 97	\$78,000 00
1810.....	7,839,814	1,933,889	36.45	8,563,369 31	7,430 63	12,448 68	.....
1820.....	9,636,131	2,398,317	33.35	15,005,619 15	106,980 53	31,586 82	6,465 95
1830.....	12,866,090	3,297,889	33.96	21,922,391 39	12,160 62	16,980 59	55 13
1840.....	17,069,453	4,903,433	39.67	13,499,509 17	1,682 25	.....	.....
1850†.....	23,191,876	6,122,423	35.67	39,668,686 42	.....	.....	.....
1857†.....	.....	.....	.....	63,675,905 05	.....	.....	.....

STATEMENT—

Years.	Population, as shown by the official census.	Increase of population.	Per centum of increase.	Expenditures of the government			
				Civil list.	Foreign intercourse, including awards.	Miscellaneous.	Military service.
1790*.....	3,929,897	.....	.....	\$767,134 45	\$14,733 33	\$311,533 83	\$639,864 03
1800.....	5,305,695	1,376,098	35.01	748,688 45	395,988 18	183,636 50	2,580,878 77
1810.....	7,839,814	1,933,889	36.45	703,994 03	81,367 48	315,783 47	2,294,323 94
1820.....	9,636,131	2,398,317	33.35	1,948,310 05	253,370 04	1,080,341 85	2,636,389 31
1830.....	12,866,090	3,297,889	33.96	1,579,794 64	294,067 27	1,363,694 13	4,767,196 88
1840.....	17,069,453	4,903,433	39.67	2,736,769 31	683,378 15	2,575,351 50	7,006,967 93
1850†.....	23,191,876	6,122,423	35.67	3,097,454 39	5,990,858 81	7,025,450 18	9,687,084 58
1857†.....	.....	.....	.....	7,611,547 97	999,177 65	18,946,189 91	18,156,150 87

* The receipts and expenditures are for the period from March 4, 1789, to December 31, 1791, the time when the first statement was made. The average receipts and expenditures were obtained by dividing the whole amount of receipts and expenditures by 21 and multiplying by 12.

† After the year 1836 the revenue from postage was not paid into the treasury.

for years 1790, 1800, 1810, 1820, 1830, 1840, 1850, and 1857.

during the years 1790, 1800, 1810, 1820, 1830, 1840, 1850, and 1857.

Public lands.	Dividends and sales of bank stock, and bonus.	Miscellaneous, including indemnities and Chickasaw fund.	Receipts, exclusive of loans, treasury notes, &c.	Loans and treasury notes, &c.	Total receipts.	Average receipts during each decade.
.....	.....	\$19,440 10	\$4,418,913 19	\$5,791,112 56	\$10,210,025 75	\$5,834,300 40
\$443 75	\$71,040 00	74,712 10	10,848,749 10	1,602,435 04	12,451,184 14	8,470,325 55
696,548 82	.....	84,476 84	2,384,214 28	2,759,992 25	12,144,206 53	13,352,336 48
1,635,671 61	1,000,000 00	54,872 49	17,840,669 55	3,040,224 13	20,881,493 68	22,120,260 02
2,322,356 14	490,000 00	73,172 64	24,844,116 51	.....	24,844,116 51	23,423,104 00
2,292,285 58	1,774,513 80	874,692 28	19,442,646 08	5,589,547 51	25,032,193 59	22,820,629 98
1,859,894 25	.....	2,064,308 21	43,592,888 88	4,056,500 00	47,649,388 88	29,669,223 99
3,829,426 64	.....	1,259,920 88	68,965,312 57	3,900 00	68,969,212 57	63,762,242 93

Continued.

during the years 1790, 1800, 1810, 1820, 1830, 1840, 1850, and 1857.

Revolutionary and other pensions.	Indian department, including Chickasaw funds.	Naval establishment.	Total expenditures, exclusive of public debt.	Public debt.	Total expenditures.	Average expenditures during each decade.
\$175,913 88	\$27,000 00	\$570 00	\$1,919,289 52	\$5,287,949 50	\$7,207,539 02	\$4,118,593 68
64,130 73	31 22	3,448,716 03	7,411,369 97	4,578,369 95	11,989,739 92	8,920,102 30
83,744 16	177,635 00	1,654,244 20	5,311,082 28	8,008,904 46	13,319,986 74	13,347,440 02
3,206,376 31	315,750 01	4,387,990 00	13,134,530 57	8,638,494 28	21,763,024 85	22,267,641 56
1,263,227 31	622,262 47	3,229,428 63	13,229,533 33	11,355,748 22	24,585,281 55	22,241,426 14
2,603,562 17	2,331,794 86	6,113,896 89	24,139,920 11	4,086,613 70	28,226,533 81	20,425,767 61
1,866,886 02	1,663,591 47	7,904,794 66	37,165,990 09	7,432,728 17	44,604,718 26	29,078,425 01
1,309,115 61	4,355,683 64	12,651,694 61	65,032,559 76	6,242,027 61	71,274,587 37	62,200,666 98

† The statement of receipts and expenditures for the years 1850 and 1857 are for the year ending June 30, 1850, 1857.

The average of receipts and expenditures is for the decade including the year opposite the amount.

The foregoing table shows the average receipts into the treasury—

1790.....	for each person	\$1 48,	and the payments.....	\$1 05
1790 to 1800.....	do.....	1 60	.....do.....	1 68
1800 to 1810.....	do.....	1 84	.....do.....	1 84
1810 to 1820 (includes war of 1812).....	do.....	3 34	.....do.....	3 35
1820 to 1830.....	do.....	1 82	.....do.....	1 78
1830 to 1840.....	do.....	1 92	.....do.....	1 78
1840 to 1850.....	do.....	1 71	.....do.....	1 68
1850 to 1857, estimating ratio of increase of population at same ratio as per 1840 to 1850,	2 20	.....do.....	2 14	

From 1790 to 1857—

The increase of population has been.....	638 per cent.
Do.....payment into the treasury	993 do.
Do.....expenditures.....	1,405 do.

MINNESOTA ELECTION CASE.

MAY 20, 1858.—Ordered to be printed.

Mr. THOMAS L. HARRIS, from the Committee of Elections, submitted the following

REPORT.

The Committee of Elections, to whom were referred "the certificates and credentials of W. W. Phelps and James M. Cavanaugh, claiming seats as members of this House," with instructions "to inquire into and report upon the right of these gentlemen to be admitted and sworn as members of this House," ask leave to report :

The certificate of W. W. Phelps, which forms the credentials presented, certifies "that at a general election, held on the 13th day of October, 1857, under the constitution adopted by the people of Minnesota, preparatory to their admission into the Union as a State, W. W. Phelps received a majority of the votes cast at the said election as a member of the United States House of Representatives of the thirty-fifth Congress from the State of Minnesota, and, by an official canvass of said votes, was, on the 17th day of December, 1857, declared duly elected one of its members." The certificate of Mr. Cavanaugh is in the same language. Both are dated on the 18th day of December, 1857, signed by S. Medary, then governor, and bear the broad seal of Minnesota.

The constitution of Minnesota, under which the State was admitted into the Union, provides in the schedule—

"SEC. 21. The returns of said election for and against this constitution, and for all State officers and members of the House of Representatives of the United States, shall be made and certificates issued in the manner now prescribed by law for returning votes given for delegate to Congress; and the returns for all district officers, judicial, legislative, or otherwise, shall be made to the register of deeds of the senior county in each district in the manner prescribed by law, except as otherwise provided. The returns for all officers elected at large shall be canvassed by the governor of the Territory, assisted by Joseph R. Brown and Thomas J. Galbraith, at the time designated by law for canvassing the vote for delegate to Congress."

The 4th section of the "Act to establish the Territory of Minnesota," provides that a "delegate to the House of Representatives of the United States may be elected," &c., and "the person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly."

It will be seen, by these provisions, that the certificates of election referred to the committee are in due form certified according to law, and that there can be no question justly raised as to their regularity and force.

An objection is urged to the right of the claimants to their seats on the ground that their election was prior to the admission of the State into the Union. In the opinion of the committee, if it be admitted that there is no force in numerous precedents scattered through the journals of Congress, and extending back to the earliest times of the republic, sanctioning this course, it should be considered that Congress, by the enabling act authorizing the formation of a constitution and State government, thereby fully empowered the people of Minnesota to prepare themselves to assume, upon their admission, all the rights, powers and attributes of a sovereign State in the Union. One of these rights is that of being represented in Congress; and were elections held prior to admission for members of the House of Representatives held void, States must remain unrepresented after their admission, and until elections can be subsequently held, presenting the anomalous spectacle of States *in the Union*, without representation or voice in the national councils. The act of admission into the Union, upon being consummated, relates back to and legalizes every act of the territorial authorities, exercised in pursuance of the original authority conferred. As the election of members to this House looks directly to the end in view contemplated by the enabling act of Congress, the committee think it entirely within the scope of action conferred upon the people of the Territory, and should be respected by Congress.

Another objection urged against the admission of the members who claim seats in the House of Representatives from Minnesota is, because of their election by general ticket instead of districts. The schedule of the Minnesota constitution provides—

“SEC. 9. For the purposes of the first election, the State shall constitute one district, and shall elect three members to the House of Representatives of the United States.

The election was held throughout the State, as one district, in conformity with the foregoing provision.

This, it is contended, is in contravention of the 2d section of the act of June 25, 1842, and the election is therefore void. That section is as follows:

“That in every case when a State is entitled to more than one representative, the number to which each State shall be entitled under this apportionment shall be elected by districts composed of contiguous territory, equal in number to the number of representatives to which said State may be entitled, no one district electing more than one representative.”

It will be observed that, by the terms of this law, it was to apply only to “this apportionment,” to wit, that of 1842; but should it be held otherwise, it is conceived that its effect has been already settled. The obligation of this act was brought in question by the next Congress after it was passed, in a contest of the seats and the members returned from the States of New Hampshire, Georgia, Mississippi,

and Missouri; and the Committee of Elections, to whom the subject was referred, reported a resolution as follows:

"*Resolved*, That the section of 'An act for the apportionment of representatives among several States according to the sixth census, approved June 25, 1842,' is not a law made in pursuance of the constitution of the United States, and valid, operative, and binding upon the States."

Upon the question of the admission of the members of the States named which had so elected their representatives by general ticket, and not in accordance with the law, it was decided in the affirmative by *ayes* 127, *noes* 57. This disposition of the question has never been disturbed, although members elected under the general ticket system have been upon this floor (with the exception, it is believed, of three Congresses) ever since, and without objection. It seems now too late to reopen the question.

There seems to be but one question of any importance remaining, and this grows out of the fact that the constitution of Minnesota provides for the election of *three* members to the House of Representatives, while, by the act for the admission of the State, it is entitled to but *two*. The right of Minnesota to hold an election prior to the admission of the State has already been considered, and its legality, upon the admission of the State, has been shown. Does the act of Congress cutting down the number proposed in the constitution of Minnesota from *three* to *two* render the election previously held altogether void? If *void*, then the gentlemen presenting credentials are not entitled to be sworn, and admitted to seats in the House of Representatives; if *voidable* only, the House will not, of its own motion, so declare it until some citizen of the State of Minnesota shall call it in question. It will not volunteer to search for causes to reject those who claim to be elected its members, and who bring credentials which are regular upon their face, and entitle them to admission.

The provision of the constitution of Minnesota for the *election* of members to the House of Representatives was approved by the act of admission, but the *number* was restricted to two. The committee have before them no evidence that more than two ever were elected, notwithstanding the provision of the constitution of the State. The committee have seen no other credentials than those referred to them, nor are they aware of any proclamation of the governor, or other canvassers, declaring any persons elected besides those now claiming seats. If, therefore, the question of *election* was presented to the committee, (which it is not,) there is nothing before them to justify the rejection of their claims. The committee are only instructed to "inquire into and report upon *the right of these gentlemen to be admitted and sworn* as members of this House." The committee construe this as a *direction* to inquire into the *prima facie* rights of Messrs. Phelps and Cavanaugh to be *admitted* and *sworn*. The credentials they present, in the opinion of the committee, clearly entitle them to their rights.

It was so settled in 1795, in the case of Benjamin Edwards, and has been uniformly sustained by the House, and, since the celebrated New Jersey case, it would seem, cannot be properly questioned. These

credentials, being regular upon their face, the number of those claiming seats is the number fixed by law to which the State is entitled.

No others are known to be claiming seats ; no others are known to the committee to have been elected, or as claiming to have been elected. The committee are, therefore, of opinion that the gentlemen presenting their credentials are entitled *prima facie* to be sworn and admitted to seats ; but they do not propose that such admission shall preclude any contest as to the rights of these gentlemen which may at any time hereafter be properly instituted. They submit the following resolution :

Resolved, That W. W. Phelps and James M. Cavanaugh, claiming seats as members of this House from the State of Minnesota, be admitted and sworn as such : *Provided*, That such admission and qualification shall not be considered as precluding any contest of their right to seats which may be hereafter instituted by any person having the right so to do.

Mr. GILMER, from the Committee of Elections, submitted the following

VIEWS OF A MINORITY OF SAID COMMITTEE.

The undersigned members of the Committee of Elections, to whom the question of the right of W. W. Phelps, as a representative of the State of Minnesota on this floor, was referred, respectfully submit—

That the said W. W. Phelps is not duly elected a member of this House.

This is apparent on the slightest consideration of the plainest and most notorious facts and the simplest principles of law. His claim to his seat rests on the following certificate:

"I, Samuel Medary, governor of Minnesota, hereby certify, that at a general election held on the 13th day of October, 1857, *under the constitution* adopted by the people of Minnesota, preparatory to their admission into the Union as a State, W. W. Phelps received a majority of the votes cast at said election as one of the members of the United States House of Representatives of the 35th Congress from the State of Minnesota; and, by the official canvass of said votes, was, on the 17th day of December, 1857, declared duly elected one of said members.

"In testimony whereof, I have hereunto set my hand and caused to be affixed the great seal of Minnesota, at the city of St. Paul, [L. s.] this 18th day of December, 1857.

"S. MEDARY."

The claimant is forbidden to take his seat under that certificate—

1st. By a great constitutional principle; and

2d. By a plain rule of election law.

1st. The Territory of Minnesota was organized in 1849, and in 1857 the people were authorized to form a constitution *preparatory* to admission into the Union, and it was declared they should be entitled to one representative and as many more as their population might show them entitled to according to the present ratio.

The certificate shows the election to have been held on the 13th of October, 1857.

No census had then been taken and returned; but one had been partially taken and returned, showing a population of about 134,000.

On the 13th of October, (the same day the people of Minnesota voted on and adopted their constitution,) on that day there was no law of the United States assigning to Minnesota any number of representatives; on that day there was no State of Minnesota in existence known to the laws; the people of the Territory were then engaged in voting, *under* a law of Congress for the government of the Territory, on a constitution which that law declared to be, in terms, preparatory to admission into the Union. The United States marshal still kept the peace of the Territory, and still executed the process of the Terri-

tory. The courts of the Territory still administered the laws of the United States in the Territory; the governor appointed by the President still held the only executive power recognized in the Territory; the legislature of Minnesota still was the only legal legislature. These things so continued until the 11th day of May, 1858, when, by law of that date, Minnesota became a State.

The Supreme Court have aided our reasoning by their rulings, and they have resolved that under the Constitution the territorial laws and authorities continue exclusively in force in the Territory until the passage of the act of admission, and then cease.—(McMilly vs. Baily, 10 Howard, 77.)

It is therefore clear that the certificate is decisive against the claim of W. W. Phelps; for it shows the claim to rest on an election in a Territory of the United States, which was an act of usurpation, in its nature punishable and absolutely void. It was, and could be, by no law of the State, for it was before the State existed at all. It could not be valid by a territorial law, for a Territory cannot elect members of Congress. It is nonsense to talk of ratification by the subsequent admission of the State, for, till admission, the State was *nothing*. It was created at the moment of admission; and it is a universal principle that, if an election be without legal authority when made, it is absolutely void, and cannot be made valid by any subsequent law; for *that* is equivalent to naming the people's representatives by law, without an election at all.

In the absence of law the claimant has no right, and the electors have parted with some of their rights.

If one or two supposed precedents be cited, it is sufficient to say that precedents for such a flagrant usurpation as the naming the representatives of a State by a vote of the House of Representatives, is fit only to be reversed and expunged. It could only exist in high party times, when the necessity of votes invaded the rights of the people, and a dominant majority defied not less the rules of law and the Constitution than the plainest and most substantial rights of the people.

But it is respectfully submitted that there is no case at all analogous to this.

There is *no case* where the people of a Territory have presumed to elect, by the same ballots which determined whether they should adopt the constitution preparatory to admission, representatives to Congress; still less when on that day they elected more representatives than the act, under which they were proceeding, said they should have when admitted as a State.

The people of Minnesota did not even wait till they had expressed their opinion on the constitution; they did not wait till they had even resolved to ask Congress to admit them with it as their constitution; but while it was a mere proposal before them whether they should propose it to Congress, they go through the form of electing representatives under a constitution which they had not yet adopted themselves—which had no legal existence, even, as a petition of the people—to represent the people of a State which not only did not exist, but which had not even resolved to ask to be allowed to exist; not only so, but the law of Congress saying they should be entitled only to

one representative, and so many as the census might show her entitled to, in addition, they elected *three* representatives for a population shown by the census, so far as it appears, to be entitled only to *one*; for the ratio of 93,420 gives only *one* representative for 136,414. To be entitled to *two* representatives under the act of Congress, there must be 186,840; and for *three*, there must have been 281,460.

This claim is, therefore, at war with the plainest principles of the constitution, and beyond the shelter of the bad precedents set in high party times by parties pressed for votes.

2d. But suppose the State of Minnesota to have been capable of electing representatives before she existed, to represent her nonentity, the election and certificate is void by the law of elections.

For we must assume, in this view of the case, that the constitution was operative on the 13th of October, 1857, as if Minnesota were a State and admitted into the Union, having all the laws of the United States then existing in force, but not anticipating laws not then existing.

This is supposed to be the most favorable possible view of the case. In that event, under the enabling act, Minnesota was entitled to elect *one* member only. But concede the question of population to entitle her to *two*, she could be entitled to elect only *two*; and no one pretends population enough for *three*.

Now, the 9th section of the schedule says: "For the purpose of the *first* election, the State shall constitute one district, and *shall* elect *three* members to the House of Representatives."

This is the only law of the supposed State for holding any election. The United States have a right to pass laws regulating elections, but they have not done so. No laws exist but State laws. No law is pretended to exist in Minnesota for the election of representatives to Congress but this clause. Every election which does not conform to this clause is therefore without law, and therefore void.

If, therefore, the State law requires *three* representatives to be elected, and the State is entitled to only *two*, it is *impossible* to make *under that law* a valid election. The law makes it the *duty* of every citizen to vote for *three* persons. The returning officers are bound to *return* *three* persons. If the people *voted* for *three*, and if *three* be returned, there is no possible way of ascertaining, for which *two* of the *three* the people voted; and the ballots are void, the return is void for repugnancy and there is no one elected.

If, on the other hand, the people, by some singular accident, voted for only *two* on each ballot, there must be *three* returned by *law*; the law of the State, which is the only election law we can look at, declares the *three* highest persons *elected*, and the returns to this House must conform to that fact, and certify the election of *three* persons; and the same would be the case if each voter named only one person on each ticket; still the *three* highest would be declared elected, and equally elected; in fact, equally entitled to claim a return, and equally entitled to a seat in this House.

There is no mode or law by which this House can elect, out of the *three* certified to us, *two*, who should be the representatives. To suppose *that*, is to suppose a law of election different from the only one.

actually existing. Congress, in judging of elections, is not a legislative but a judicial functionary—deciding not what ought to be law, but whether either of the claimants before her is entitled to a seat under the State laws. What those laws say must be read alone in them. If they conflict with paramount laws, they *are void*; but the fact that the only law of the State is *void* because in conflict with a paramount law, does not create another law in conformity with the paramount law. The law remains simply *void*, and is as if it had never existed. So that if the only law of a State for an election be absolutely in conflict with the Constitution of the United States, or a law of Congress constitutionally binding on the State, it is as if there were no law of the State *at all* on the subject; and if it be the only election law of the State, then there is *no* election law, and no election is possible till one shall be passed. The mere declaring by Congress that the State shall be entitled to *two* representatives, is not an election law, but defining the number which the State *may elect*. It confers on Congress no power to elect for the State, between several persons equally elected by the State laws, any more than it gives the power to Congress to say which of two persons having an equal number of votes shall be the representative.

Nor can the difficulty be avoided by assuming a particular case, when there may happen to be two candidates having a majority and the highest number of votes, and the third having *the next highest*, and solving the difficulty by taking the two highest and leaving out the *third*.

For if all three have a clear majority of the whole vote, it is clear that a majority of the whole people have *sent all three*; and the minority who gave a greater vote to two over the *one*, have no right awarded to *them* to elect their favorite to the exclusion of the third person having also a majority of the whole vote cast. And if only two have a majority of the *whole vote*, and the third stand next highest, the case is not altered, for the law equally declares *all elected*. A majority elects only *because* the law says so. The law may require two-thirds, or it may declare the highest vote, though a minority, sufficient; but in either event it is not the mere fact that a majority or a mere plurality of votes are cast for the three persons which elects them, but the fact that the *law declares* that the three having such number of votes shall be declared elected, which elects them. The one is as much elected as the other. The highest is no more elected than the lowest of the three. And the fact that two of the three have higher numbers than the third, can be no *ground* for Congress to select between the three persons *elected* by the State law, to make a Congressman out of two and repudiate the third. That is for Congress to elect instead of the people. If the State law might say, whoever gets 10,000 votes shall be declared elected, it is plain any surplus over 10,000 would give no one any advantage over one having only 10,000.

In a word, any supposed right of Congress to select two out of three, by reason of two out of three declared elected by the State law happening to have more votes than the third, assumes that it is not the *law*, but the number absolutely, irrespective of the law, which elects;

and this is plainly not so, when the law expressly declares that *three* shall be declared elected, and draws no distinction between the validity of the election of the third by reason of any difference in the number of their respective vote *between themselves*.

Votes may not follow the ratio of number merely, and we must always look to the law to see the value assigned to the number. When the House of Representatives elect a President, the votes cast are not counted, except as members constituting a State vote; a majority of *all must concur* to elect, and they cannot elect unless two-thirds of the States be present. This sufficiently shows how fallacious and arbitrary a test mere numbers are. *It is the law alone* which prescribes the value to the number; and if it say a smaller number shall elect equally with a larger number, provided the smaller number bear any assigned relation to the whole number, then the person getting such smaller number is equally elected with the other under the only law declaring who shall be returned as elected.

In a word, the law of Minnesota is *void*, because in direct conflict with a paramount law; and she can have no representation till she has changed her law and made it conform to the law of Congress.

Here is not the case of an election law providing for the election of *two* when *three* are returned, but the fact is apparent that two have a greater number than the *third*; for the law itself declares the two elected, and the third is rejected as mere surplusage.

But it is the case of a law self-contradictory and repugnant, the law of Congress declaring that two only shall be elected, and there stopping; the law of the State requiring that three shall be elected, and declaring the three having a certain proportion of votes to be elected. It seems plain the law is wholly incapable of being executed, and is void. It is equally clear that the declaration by Congress, after the actual election under the constitution, that the State shall be entitled to only two, cannot better the case. If the number allowed and elected had happened to agree, the after law *might*, with some plausibility, be treated as a ratification; but when the whole election was done, and some three were elected under the *State law*, the subsequent declaration that only two could be admitted could by no possibility *avoid* what was valid according to the State law before, nor elect and discriminate between equal titles under the same law by an arbitrary rule not prescribed by the law, drawn from the irrelevant question of which two got most votes, when *all had enough* under the law electing them.

3d. But in the particular case, we are not driven to such legal discussions.

In point of fact, it is uncontroverted—it is notorious—that the election was for *three* members, on the same day, at the same polls, by the same ballots which were cast for or against the constitution, and that three persons by the canvassers were declared elected. The constitution required the people so to do; the certificate of W. W. Phelps states that the election was held under the constitution, and that W. W. Phelps received a *majority* of the votes cast at said election, as *one* of the members of the House from the State of Minnesota. If these things be so, then it is the plain case of three persons voted for

and elected at the same election, on the same day, and at the same time and places, when only two could be validly chosen ; and that case has been ruled a void election, as to all, by the highest authority.— (See 7 Cong. Globe, 135 ; Cushing's Pol. Law, 104 ; Glanville Cases, II and XXI.)

It is impossible for the House to say which of the *three* the people preferred. They have not expressed their will between them, but only between them and others. If we accept two and reject one, or elect him and assign a meaning to the ballots for him which the people casting them did not assign to them, this House is bound to notice the election laws of the States and the proceedings of officers under them. We may have to inquire, by evidence, into the details of numbers of votes and the qualification of voters, where a contest arises on the question of a majority ; but we are entitled to take legal notice, without proof, of the proceedings of the canvassers, and what they do, and who they are, just as W. W. Phelps supposes us to recognize Mr. Medary as the officer of the Territory mentioned in the constitution ; just as judges notice the seal of the United States, or of a State, without proof. So that we are bound, in point of law, to notice the fact that three persons were declared elected by the canvassers, and that their certificate before us is only certifying one of them equally elected at the same time and places, under the same law, and that all are equally void.

It is erroneously supposed that the question referred to the committee concerns merely the right of Mr. Phelps to take his seat provisionally as holding the certificate.

We regard the question presented as going to his right to the seat at all, whether provisionally or finally ; and if the evidence and law show that he can in no event be entitled to the seat, we are *bound* now to say so, and to exclude him from a position to which he can have no claim at any time.

In the present case, it is impossible to separate the two questions of a right to take the seat till a better title is shown, and an absolute right to the seat, for no one can claim the seat provisionally who is not *prima facie* entitled to hold it absolutely. It is not any certificate which entitles the holder to claim the seat. The certificate itself must be a legal certificate ; it must purport to be from or by an officer authorized to give a certificate ; it must purport to represent the result of a *possible* election according to the law, and it must show that under such an election the holder is elected *prima facie*.

But this certificate is a mere nullity, and so appears on the simplest inspection of it. The certificate does not purport to be from any officer of the State of Minnesota, nor by any officer authorized by any law of that State to make the certificate. It does not purport to be in pursuance of any law of the State, but is dated before the existence of the State, and certifies an election before the people had even voted on the constitution. It certifies Mr. Phelps to have been elected before Congress had assigned any representatives to the State of Minnesota ; before the office of representative for that State had any legal existence, and it purports to give the result of an election held under a law by

which no valid election of the number of representatives since authorized could possibly have been elected.

The certificate is, therefore, on its face, not a *prima facie* title, but a *prima facie* refutation of title, and effectually precludes all right, provisional or final, to a seat.

The facts in the case of James M. Cavanaugh being the same, we are of the same opinion as to his right to qualify as a member of this House.

We therefore offer the following resolution:

Resolved, That W. W. Phelps and James M. Cavanaugh, have no right to qualify and take their seats.

EZRA CLARK, JR.
JAMES WILSON.
JOHN A. GILMER.

MAY 19, 1858.

MR. ISRAEL WASHBURN, Jr., from the Committee of Elections, submitted the following

VIEWS OF A MINORITY OF SAID COMMITTEE.

The undersigned, a member of the Committee of Elections, to whom was referred the credentials of Messrs. Phelps and Cavanaugh with instructions to report on their right to be admitted and sworn as representatives in this House for the 35th Congress from the State of Minnesota, dissenting from the conclusions of the majority, asks leave to submit the following minority report :

On the 26th day of February, 1857, Congress passed an act entitled "An act to authorize the people of the Territory of Minnesota to form a constitution and State government, preparatory to their admission into the Union on an equal footing with the original States." The fourth section of this act provides for the taking of a census of the people of Minnesota with the view of ascertaining the number of representatives to which she would be entitled in the Congress of the United States; and it is declared that "*said State shall be entitled to one representative, and such additional representatives as the population of the State shall, according to the census, show it would be entitled to according to the present ratio of representation.*"

Under the authority of this act, a constitution was prepared, and submitted to the people of Minnesota, and by them approved on the 13th day of October, 1857. The ninth section of article sixteenth of this constitution is as follows :

"For the purposes of the first election, the State shall constitute one district, and shall elect three members to the House of Representatives of the United States "

Section sixteen of the same article provides that, "upon the second Tuesday, the 13th day of October, 1857, an election shall be held for members of the House of Representatives of the United States, governor, lieutenant governor, supreme and district judges, members of the legislature, and all other officers designated in this constitution, and also for the submission of this constitution to the people for their adoption or rejection."

In pursuance of these provisions of the constitution, and on the very day upon which the people of Minnesota were to decide whether it should be adopted or rejected, an election was held for three representatives in the Congress of the United States.

The returns of the votes for these officers were afterwards, on the 17th day of December, 1857, canvassed by the proper officers, and the following gentlemen, viz: W. W. Phelps, J. M. Cavanaugh, and G. L. Becker, declared to be duly elected.

On the 18th day of December, 1857, certificates of election were made out and delivered (signed by "S. Medary, governor" of the Territory of Minnesota) to said Phelps and Cavanaugh, and, as the undersigned is informed and believes, and as he understands to be the

admitted fact, to said Becker, of each of which the following, with the exception of the name of the person elected, is a true copy :

"I, Samuel Medary, governor of Minnesota, hereby certify, that at a general election held on the 13th day of October, 1857, *under the constitution adopted by the people of Minnesota, preparatory to their admission into the Union as a State*, W. W. Phelps received a majority of the votes cast at said election as one of the members of the United States House of Representatives of the 35th Congress from the State of Minnesota, and, by an official canvass of said votes, was, on the 17th day of December, 1857, declared duly elected one of said members.

"In testimony whereof, I have hereunto set my hand and caused to be affixed the seal of Minnesota, at the city of St. Paul, this [L. s.] 18th day of December, 1857.

"S. MEDARY."

An act for the admission of the State of Minnesota into the Union was passed the 11th day of May, 1858. By this act the number of representatives to which the new State is entitled in the Congress of the United States is fixed at two. The language is as follows: "That said State shall be entitled to two representatives in Congress until the next apportionment of representatives amongst the several States."

On the 13th day of May instant, Messrs. Phelps and Cavanaugh caused their credentials to be presented, and asked to be sworn as members of this House; whereupon the House passed the following resolution:

"*Resolved*, That the certificates and credentials of W. W. Phelps and James M. Cavanaugh, claiming seats as members of this House from the State of Minnesota, be referred to the Committee of Elections, with instructions to inquire into and report upon the right of these gentlemen to be admitted and sworn as members of this House."

In the preliminary inquiry which the committee were directed to make, the undersigned did not deem it material to investigate several questions suggested by the facts, admitted or alleged to exist in the case, bearing upon the general question of the election of the claimants, rather than upon their *prima facie* right to be sworn; and which questions are not understood to have been acted upon by the committee, but have been left to the future action of the House. He acknowledges the great inconvenience that would result if, in the ordinary cases of election contests, the question of the right to seats was to be raised, discussed, and decided, upon the presentation of the credentials of persons whose rights are disputed. But he cannot doubt the strict propriety of raising the question of right, in the first instance, whenever the papers in possession of the House, and the laws, which it is presumed to know, show that there cannot have been a legal election. The question now presented, is not so much whether there has been a legal election of representatives in Congress from the State of Minnesota, as whether the papers presented to the House, the laws of Congress, and the constitution of Minnesota, contain anything fatally inconsistent with that hypothesis.

In the judgment of the undersigned, they do. He believes that, under

the law of Congress and the constitution of Minnesota, there has been, there could have been, no legal election. The facts necessary to be known for the final action of the House are such as it is bound to take cognizance of. The credentials of the claimants are in its possession; the law admitting Minnesota as a State was passed at the present session, and therefore its members must be supposed to be actually as well as constructively acquainted with its provisions; the constitution of Minnesota was not only referred to in this act, but it was upon that instrument that the act is founded; and besides, it is so recited in the certificates of the territorial governor as to make it a part thereof.

When these gentlemen presented themselves to be sworn in as representatives from Minnesota, the House was presumed to know, and it did know, that that State was entitled to two, and only two, representatives; and further, that the election at which they allege they were chosen was an election for three and not for two representatives. Of these facts the House had perfect and complete knowledge, knowledge actual and constructive, at the time of the reference to the Committee of Elections. They can never be disputed or varied, and they prove conclusively that there has been no election that this House can recognize for a moment. The objection is vital and insurmountable. That it is so, is apparent upon the first view of the case. There cannot have been an election of which this House can take notice, unless it was held under the provisions of a law of Minnesota. There can have been no law of Minnesota inconsistent with a constitutional law of Congress upon the same subject. The law of Congress, of whose validity no doubt can be raised, declares that Minnesota shall have only two representatives in this House. The law of Minnesota, (her constitution,) under which the election took place, declares that she shall have and "elect" three representatives. Under this law, for she had no other, her people voted for and elected three representatives. If the law is valid and effective, the three are elected, one as much as another; if not valid, none are elected; for there can be no election which was not held under the provisions of law; any other election is but the choice or designation of unauthorized assemblies of the people. If the law of Minnesota has sufficient force and vigor to entitle these gentlemen to be "sworn and admitted," it has enough to retain them in their seats. If their case is *prima facie* a good one, it is a perfect one, so far as this question is concerned; for all that can be shown hereafter, bearing upon it, is shown and understood now. From what already appears, the House is informed by an irresistible logic that these gentlemen have not been elected under any law of Minnesota.

It is said that Messrs. Phelps and Cavanaugh have received a larger number of votes than any other candidates for the office of representative. Conceding this to be true—concerning which, however, there is no evidence, except what may be implied from the fact that certificates were made out and delivered to them—and that no inference of the kind is deducible from this circumstance, is obvious from the fact that a similar certificate was issued to another gentleman, (Mr. Becker,) who has not seen fit to present it here—and their case is not improved, for it still remains that they were not elected under any regulation of the State of Minnesota having the vigor of

law. Three representatives were elected, if any were; there was no law for any other number. Had there been a law for two, in conformity with the act of Congress, *non constat*, Messrs. Phelps and Cavanaugh, or either of them, would have received a larger number of votes than Mr. Becker, or some other candidate; the people voted for three representatives; if the election had been for two, we have no right to assume that voters who preferred Mr. Phelps or Mr. Cavanaugh to the opposition candidates, would have preferred either of them to Mr. Becker. To permit the candidates to decide among themselves who shall be admitted to seats and who shall retire, would be to transfer the election from the people of the State to the candidates. But it is confidently submitted that the House has no right to admit members who do not appear to have been elected by the people of a State under the laws thereof. In the opinion of the undersigned, it would not be within the authority, or comport with the dignity, of this House, to receive members who were not elected under a law of the State which they claim to represent, or of Congress; or, where a larger number are returned than the State is entitled to elect, to authorize them to decide among themselves who shall be its representatives.

The State of Delaware is entitled to one representative. Suppose she should provide by law for the election of two, will it be contended that such a law would be of any force or validity? And will it be said that if, under such law, she should elect two representatives and send them here, it would not be competent for the House to reject them both upon their presenting themselves to be sworn in as members? And if both might be properly rejected, either might be; otherwise it would be an election by the House, and not by the people of Delaware. By what legal and safe rule can the House proceed to determine which of the two persons, designated and returned under the provisions of such a law, should be admitted as the properly elected representative of the State? It is believed there is none.

If in this case Mr. Becker had presented his credentials, and asked to be sworn as a representative from Minnesota, by what rule or upon what principle could the House have decided that the application of Messrs. Phelps and Cavanaugh should be preferred to his? The fact that he does not appear can add no strength to their position. It is the right of the people of Minnesota with which the House has to do, and no arrangements between these parties, no negligence or dereliction on the part of either of them, can be permitted to affect this right.

In the case of Reed *vs.* Cosden, Contested Elections, page 353, it was decided "where two candidates had an equal number of votes, the governor and council, assuming to act under a State law, 'proceeded to decide between them which should be representative,' and gave their certificate of election to Jeremiah Cosden, who became the sitting member. This proceeding being illegal and unwarranted by the constitution, was not admitted as evidence of his right to a seat in the House."

The committee, in their report, say:

"The Constitution of the United States, article 1, section 2, provides that: 'The House of Representatives shall be composed of members chosen every second year by the people of the several States; and

the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the legislature.' Section 5 of the same article provides that 'each House shall be the judge of the elections, returns, and qualifications of own its members.'

"On the first Monday of October, 1820, in conformity with the law of Maryland, an election was held by the qualified electors of the sixth congressional district. On that day they either did or did not elect a member of Congress. None could be elected unless he received a greater number of votes than were given for any other candidate.

"The term election must mean the act of choosing, performed by the qualified electors, in conformity with the requisitions of the Constitution and laws regulating the manner in which the choice shall be made. If, therefore, the legal electors on the day appointed should fail to make a choice, it is confidently believed that no other authority of the State can at any other time make good this defect. Let it be supposed that the electors should fail to attend an election; that, subsequently, no election is held, would it then be contended that the executive authority could, by lot or otherwise, appoint a representative for such district in the Congress of the United States?"

"This is a power which it is presumed none will contend does exist. Yet it is believed to be nothing more than that which has been exercised by the governor and council of Maryland in the case under consideration.

"In this case, the electors assemble, they proceed to elect, they make no choice; they come to no constitutional result. It is asked, what is the difference between the two cases? The one would be an appointment, because no election had been held; the other because no choice had been made. The committee, being of opinion that the power thus virtually exercised by the governor and council of Maryland, in appointing a representative to the Congress of the United States, being contrary to the express provisions of the Constitution, and one which this House cannot sanction, have no hesitation in rejecting the official statement of the proceedings in the case as evidence of the right of the sitting member to a seat in this House."

In the case cited, appears to have been decided that it is not competent for the House to admit as a representative one who has not been elected by the "people" of the district or State which he claims to represent, and that there can be no valid election unless it was held under the provisions of a law of the State, consistent with the Constitution of the United States. This authority would seem to be decisive of the question referred to the committee.

The highest considerations of policy, and a proper regard for the authority of Congress, should caution us against the establishment of a precedent so unsound and pernicious in principle as this would be, and which, if respected hereafter, must lead to manifold inconveniences and abuses.

The undersigned recommends the adoption of the following resolution:

Resolved, That Messrs. W. W. Phelps and J. M. Cavanaugh are not entitled to be admitted and sworn as members of this House.

I. WASHBURN, JR.

GEOLOGICAL SURVEY OF OREGON AND WASHINGTON
TERRITORIES, ETC.

MAY 22, 1858.—Referred to the Committee on Printing and ordered to be printed.

MR. JOHN G. DAVIS, from the Committee on Public Lands, made the following

REPORT.

Mr. John G. Davis, from the Committee on Public Lands, made the following report on the geological survey of Oregon and Washington Territories, and geological explorations in connexion with the explorations for a railroad route to the Pacific, near the 47th parallel of latitude, under the War Department.

In 1851 it was determined by the Secretary of the Interior, under the act of September 27, 1850, pointing out the manner of making surveys in Oregon, to connect with the land surveys a geological reconnoissance and exploration. It was also deemed essential to the proper construction of maps that the latitude and longitude of the intersection of the base and meridian lines should be determined. To accomplish this object, a transfer of \$2,500 was made from a fund for similar service in the northwest, and Dr. John Evans was directed, on the 22d March, 1851, to proceed overland to ascertain the general geology of the country west of the Missouri river, towards the Rocky mountains; to reconnoitre for practicable wagon routes over the Rocky mountains to the Pacific ocean, and when in Oregon, to aid the surveyor general in obtaining the elevations along the base and meridian lines, and to determine the latitude and longitude of their intersection, by astronomical observations. He was further instructed "that the great object of his mission was to develop and make apprehensible whatever matters his professional skill should deem to be most useful to the infant settlements in the Territory whose people had sought to interest the government in the kind of scientific research required." These results were reported to the General Land Office.

In December, 1851, and in December, 1852, the legislature of Oregon petitioned Congress for further appropriations; and, on recommendation by the Department of the Interior, \$16,984 25 was appropriated for this service. This sum included a deficiency for service the previous year. At the same time the geologist was instructed "to co-operate with Governor I. I. Stevens, appointed by the War Department to explore for a railroad route to the Pacific, near the 47th parallel of north latitude," to draw up instructions for the

TURNPIKE ROADS IN DISTRICT OF COLUMBIA.

MAY 24, 1858.

Mr. GOODE, from the Committee on the District of Columbia, submitted the following

REPORT.

The majority of the Committee on the District of Columbia, to whom was referred a resolution of the House of Representatives, instructing them to inquire into the propriety and expediency of the United States purchasing out the toll-gates on the several turnpike roads leading through the District of Columbia to the seat of the national government, with a view to make them free, and to report by bill or otherwise, beg leave respectfully to report:

That they have had the subject of said resolution under consideration, and are of opinion that it is inexpedient for Congress to purchase the said turnpike roads, and pray to be discharged from the further consideration of the subject, all which is respectfully submitted.

Mr. BOWIE, from the Committee on the District of Columbia, submitted

THE FOLLOWING VIEWS OF THE MINORITY.

The undersigned, a minority of the Committee on the District of Columbia, to whom was referred a resolution of the House of Representatives, instructing them to "inquire into the propriety and expediency of the United States purchasing out the toll-gates on the several turnpike roads leading through the said District to the seat of the national government, with a view to make them free, and to report by bill or otherwise," have had the same under consideration, and beg leave, respectfully, to make the following report:

For the last twenty-five years it seems to have been the settled policy of Congress to remove and abate all obstructions and burdens on the free right of ingress and egress to and from the seat of govern-

ment. The people of Virginia and Maryland, in particular, as well as all others having business in Washington, were subjected to heavy and unreasonable taxation in their intercourse with the people of Washington. Four bridges, two across the Potomac river and two across the Eastern branch, were the private property of incorporated companies, and heavy tolls were exacted under their corporate powers from all passengers crossing the same. This state of unreasonable taxation on all visitors to the seat of government had existed for a long time, until, by frequent remonstrances from the people of Virginia, Maryland, and the District of Columbia, Congress was induced to inaugurate a system of legislation leading to a mitigation of the evils complained of; accordingly, on the 14th of July, 1832, Congress passed an "act providing for the purchase by the United States of the rights of the Washington Bridge Company, and for the erection of a public bridge on the site thereof."—(See Statutes at Large, vol. 4, pages 582 and 583.) By this act the sum of \$30,000 was appropriated for the purchase of the rights of the company, and \$60,000 for the erection of a new bridge. And thus it was that the Potomac Long Bridge was made a free bridge, and has so remained from that to the present time. This seems to have been the first act of Congress on the subject; but it was soon followed by the act of March 2, 1833, by which Congress appropriated the sum of \$150,000 for the purchase by the United States of the bridge near the Little Falls above Georgetown, and for constructing a *free* turnpike between Georgetown and Alexandria.—(See Statutes at Large, vol. 4, p. 646.) And on the 12th August, 1848, the bridges across the Eastern branch, the one known as the "Navy Yard bridge," and the other as "Benning's bridge," were authorized by Congress to be purchased for the United States and made free, and the sum of thirty thousand dollars appropriated for that purpose.—(See Statutes at Large, vol. 9, p. 292.) By the operation of this system of federal legislation the people of Virginia, the District of Columbia, and the lower portion of Maryland, and all others having to pass those bridges in their approach to the national capital, have been very justly and properly relieved of heavy and burdensome exactions in their business and other relations with the people of this city and the various branches and departments of the government. But while this portion of the people of Virginia, Maryland, and the District of Columbia have been thus peculiarly favored, there are other portions of the people of Maryland and the District of Columbia who have not received the same equal and exact justice at the hands of the federal government. It is well known that there are at this time three turnpike roads, the private property of incorporated companies, leading to the city of Washington through portions of Maryland and the District of Columbia, on which toll-gates are erected and kept, and heavy and burdensome tolls exacted from all who pass through them. These are, first, "the Columbia turnpike road," extending from the eastern end of Maryland avenue to the District line, in the direction of Bladensburg; second, the "Rockville and Washington turnpike road," leading from the city of Washington to Rockville, in Montgomery county, Maryland; and the third, the "Washington turnpike road," leading from Washing-

ton, via Georgetown, to Rockville. In pursuance of the authority vested in the committee by the resolution of the House, they directed an inquiry to be made of the president and directors of the said several turnpike companies as to the terms on which they would be willing severally to dispose of their corporate rights to the United States, with the view of making the said roads free, and the abolition of all tolls and charges thereon, and the committee have received their several answers, which the undersigned begs leave to file with this his report, and to make it a part of the same, numbered 1, 2, and 3.

From these answers it will appear that the "Columbia Turnpike Road Company" will agree to sell to the government that portion of their road leading from the eastern end of Maryland avenue to the district line, in the direction of Bladensburg, (which is understood to be the terminus of their road in that direction,) for the sum of \$12,000, "reserving the *toll-house and lot whereon the gate-keeper has, at his own expense, erected several out-houses,*" which will not be wanted or required by the United States. "The Rockville and Washington Turnpike Road Company" agree to sell their entire interest in said road for the sum of \$25,000, and the "Washington Turnpike Company" their entire interest for the sum of \$20,000, making, in the aggregate, for the three roads the sum of \$57,000. These sums, it is said, do not approach anything like their original costs; but still, at these valuations, the said roads are paying to their several stockholders a dividend of six per cent. on these estimated values. Under these circumstances, the committee cannot think that their actual value has been over estimated, as it would be unreasonable to expect them, or either of them, to take less for their respective roads than a sum which, if invested, would bring them a sum equal to the net value of the present tolls actually received by them. The committee, therefore, as the undersigned supposes, can make no objection whatever to the prices which they have severally fixed on their respective roads.

In view of these facts, the only question which presents itself to the consideration of the committee is, whether it is proper or expedient for the United States to purchase from these companies their corporate rights in these turnpike roads with a view of abolishing the tolls and toll-gates thereon, and making the same free? On this question it seems to the undersigned the committee can have no doubt whatever. The just and equitable policy of the government on this subject has been too long, and well and often, settled to admit now of any departure whatever. If the people of Virginia, and of Maryland, and the District of Columbia, who formerly had to pay tolls on the Potomac and Eastern Branch bridges, have been relieved of those burdens by the government, by making the said bridges free and the abolition of all tolls thereon, why should not other portions of the people of Maryland and the District be relieved of similar burdens imposed on them by the incorporated turnpike companies *this side* of the river? They are all *highways* to the great metropolis of the Union, and the same measure of justice and equality should be extended to all alike in their intercourse with the federal heart of the nation. We must either retrace our steps, and repeal all the laws on the subject of the free bridges and reinstate them to what they once

were, or we must abolish the tolls on the turnpike roads *this side of the river*, by purchasing them from their proprietors. The one or the other course must be adopted before the government can be justly shielded from the imputation of oppressive partiality. But aside from the equity and justice of such a policy, the undersigned is of opinion that a proper regard for the interest of the people of this District, and of this metropolis in particular, should have great weight in inducing Congress to adopt the course now recommended by the undersigned. It is well known that an extensive and valuable trade is carried on between this city and Georgetown, and the surrounding portions of the district and of Maryland, *this side of the river*. By far the greater part of the markets for these cities, it is believed, is supplied by these sections of the country; and it cannot be doubted that a withdrawal of these restrictions and limitations on the trade will, in a great degree, increase the extent and value of that trade, and mutually promote the interest of both parties to the same.

In conclusion, the undersigned is of opinion, on a review of the whole subject, that the United States ought to purchase out the rights of the said several turnpike road companies, and that the said roads ought to be made free and all taxes and tolls thereon abolished. He therefore reports the following bill, as a substitute for the report of the majority, and recommends its passage by Congress.

THOMAS F. BOWIE.

A bill to authorize the Secretary of the Interior to purchase for the United States the right of the "Columbia Turnpike Road Company," of the "Rockville and Washington Turnpike Road Company," and of the "Washington Turnpike Road Company," in and to their several turnpike roads, and to make the same free roads.

Be it enacted by the Senate and House of Representatives in Congress assembled, That the sum of fifty-seven thousand dollars, in the mode and manner hereinafter mentioned, be, and the same is hereby, appropriated out of any money in the treasury not otherwise appropriated, to be expended under the direction and control of the Secretary of the Interior in purchasing for the United States all the rights of the said several turnpike road companies hereinafter mentioned, and to make the same free roads—that is to say:

First. The sum of twelve thousand dollars to enable the said Secretary of the Interior to purchase from the "Columbia Turnpike Road Company" all their rights in and to that part of their said turnpike road extending from the eastern end of Maryland avenue in the city of Washington to the District line, in the direction of Bladensburg, reserving the toll-house and lot, whereon several outbuildings are erected, which are not wanted by the United States; and said turnpike road, when so purchased, shall be, and hereby is made, a free road, and all tolls and charges whatever thereon shall be forever abolished.

Second. The sum of twenty-five thousand dollars to enable the

Secretary of the Interior to purchase from the "Rockville and Washington Turnpike Company" all their rights in and to the said turnpike road, with the like reservation as to the toll-house and lot on which the same is erected; which said turnpike road, when so purchased, shall be, and is hereby made, a free road, and all tolls and charges whatever thereon shall be forever abolished.

Third. The sum of twenty thousand dollars to enable the Secretary of the Interior to purchase from the "Washington Turnpike Road Company" all their rights in and to their said turnpike road within the said District, with the like reservation of the toll-house and lot on which the same is built; which said road, when so purchased, shall be, and is hereby made, a free road, and all tolls and charges whatever thereon shall be, and is hereby, abolished.

SECTION 2. *And be it further enacted*, That as soon as the said turnpike roads shall have been purchased and made free as aforesaid, the offices of toll keepers thereon shall be abolished, and the said roads, as far as the same may lie within the limits of the District of Columbia, shall be placed under the supervision of the levy court of Washington county in the said District, to be kept in repair as all other county roads in said District are now required by law to be repaired.

MICHAEL NASH.

[To accompany Bill S. 261.]

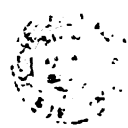
MAY 24, 1858.

Mr. Goode, from the Committee on the District of Columbia, submitted the following

REPORT.

The Committee on the District of Columbia, to whom was referred the Senate bill 261, entitled "An act for the relief of Michael Nash, of the District of Columbia," have had the same under consideration, and report :

The memorialist was appointed in 1840, as superintendent of convict shoemakers at the penitentiary of the District of Columbia, at a compensation of \$550 per annum, and held the office for more than seven years at that rate of compensation, when, in 1849, he ceased to hold the office, and his successor has since received an increase of salary of one hundred dollars per annum, which the memorialist thinks should extend to himself also, and he asks that he may be allowed \$650 a year from the date of his appointment to the close of the term when he held the place, which your committee deem unreasonable, and recommend that the bill do *not pass*.



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